
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP - Phase 2A

Tuesday, 11 May 2021 at 14:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening and welcome to the EPDP P2A team call, taking place on the 11th of May, 2021 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, for the RrSG, Sarah Wyld will join for the first hour and then Theo Geurts, as alternate, will join for the last 30 minutes. We have listed apologies from James Bladel of RrSG and Milton Mueller of NCSG. And they have formally assigned Owen Smigelski as their alternate for this call, any remaining days of absence.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

All members and alternates will be promoted to panelist for today's meeting. Members and alternates replacing members, when using chat, please select "all panelists and attendees" in order for everyone to see your chat. Attendees will not have chat access, only view to the chat. Alternates not replacing a member are required to rename their lines by adding three Zs to the beginning of your 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 functionalities such as raising hands, agreeing, or disagreeing. As a reminder, the alternate assignment form must be formalized by the way of the Google link. The link is available on the 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 email 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 multistakeholder process are to comply with the Expected Standards of Behavior. With this, I'll turn it back over to our chair, Keith Drazek. Please begin.

KEITH DRAZEK:

Thanks very much, Terri. Hi, everybody. Good morning, good afternoon, good evening. Welcome to the EPDP Phase 2A meeting 21 on the 11th of May. So let's jump right in. We'll do a quick review of the agenda as always and then we'll get right into the discussion. So we're going to start today. Item number three on our agenda is the discussion on legal and natural.

We're still focused on the same two chartering questions—question one, whether any updates are required to the EPDP Phase 1 recommendation on this topic. Our first order of business today will be to walk through the staff-proposed writeup of the initial report text. I'll turn it Caitlin when we get to that section and then to look to confirm next steps about a proposed deadline for comments and suggestions, any proposed edits coming up by the end of this week.

On this one, before we jump into it, I think the current assessment is that there's not likely to be consensus or agreement on new consensus policy recommendations or requirements on the topic of legal and natural. So we want to make sure everybody's focused on the language that's been proposed for inclusion in the initial report that would be put out for public comment. But essentially, that's where we are at that point on this question. And we'll get into the detail of that initial report text here in a moment.

Then, we will turn to a discussion of the guidance writeup. So this is the staff writeup with everybody's contributions and input. We'll do a brief overview of the main changes applied since the meetings last week. There are some outstanding questions included here in the agenda so folks can review that right now. And we'll talk about proposed next steps on the guidance. And

again, that's guidance for registrars who choose to differentiate between legal and natural or may choose to differentiate in the future. So I think here it's important to note that we're not only talking about registrars that currently differentiate but providing guidance to those who may choose to differentiate in the future.

And then, we'll move to a discussion, time permitting, on feasibility of unique contacts. And I know there's quite a bit in the agenda today. But this is also something we need to focus on. So feasibility of unique contacts. And again, we'll review and consider the input provided on the writeup, including the outstanding questions that are listed here in the agenda. So the agenda was circulated in advance as always so either review what's on the screen or refer back to the circulated document for the questions that we will be focusing on today.

And then, we'll turn to a homework assignments reminder. It's on the screen in front of you but we'll get to that a little bit later on. So back to the top of the agenda, please. Thank you. Any comments, questions, or anything on the agenda before we get started?

All right. Very good. So let us turn, then, directly to legal and natural. And we're going to go directly now to the staff-proposed writeup. And Caitlin, I'll hand it over to you to tee this one up. Thanks to everybody for your input on this. Thanks to staff for all of the work that they've done to consolidate. And with that, Caitlin, if I could hand it to you. Thank you.

CAITLIN TUBERGEN: Thank you, Keith. To tee up this document, I just wanted to note that in writing this, we took into account a lot of the discussion that the group has had to date. This, as it notes on the top, is the proposed text for inclusion in an initial report. The difference between this document and the guidance document that the team has been working on is that this document deals with any requirements or any actual policy recommendations in response to the question that was posed from the GNSO Council, whereas the guidance document, as we've talked about, is optional for any Contracted Parties that do wish to differentiate. Those guidance principles can be used by them if they choose.

So at the top of the document is the question posed from the Council about whether the Phase 1 recommendation should be changed. The draft text at the top notes that there are differing opinions in the EPDP Team. Namely, there are some members of the EPDP Team that believe that the Phase 1 recommendation should change, that differentiation should be required, and that they believe differentiation should be required because currently, there is an overprotection or over-redaction of data elements that are not protected under data protection legislation. And in order for those data elements to not be redacted or not be overprotected, that differentiation should be mandatory.

There are other EPDP Team members that believe that flexibility is needed and that it should ultimately be the choice of the data controller whether to differentiate or not so the Phase 1 recommendation should not be changed.

So we noted both of the positions there. However, we also noted that that EPDP team notes that there are some elements that may

require a change to the recommendation from Phase 1 in the future, namely the NIS2, as well as the possible adoption of the SSAD. So as a result of that, we have a draft recommendation here that the EPDP Team recommends that the GNSO Council monitor developments in relation to the adoption and implementation of NIS2, as well as the possible adoption of SSAD to determine if and when a reconsideration of this question should be considered or is warranted.

I'll note that the GNSO Council is expected to consider input from GNSO SGs and Cs but also that the ICANN SOs and ACs are welcome to provide input to help inform a decision.

As we move further into the document, we note that the team recognizes that there may be a need to facilitate and harmonize practices for Contracted Parties who do decide to differentiate between legal and natural persons. And here, we have some proposed text about the flag that may members have been discussing, in terms of registrars may consider using a flag that would indicate the type of data concerned natural and personal versus nonpersonal. The idea would be the indicate what type of data is concerned.

And we note that the ability to do this is noted or referenced in Recommendation 9.9.4 of the Phase 2 report, where Contracted Parties must automate the disclosure of data elements that are not personal from a record that was previously disclosed. So in order to do that, there has to be some sort of way to flag the type of data concerned.

Noting that, we have a draft recommendation here, that ICANN Org must implement the capability for Contracted Parties to flag in the registration data whether the data concerns a legal person, a natural person, or unknown, as well as the ability to flag whether the registration data concerns personal data, nonpersonal data, or unknown. And we note that this may require a modification to the consistent labeling and display policy. ICANN Org may need to consult with the IRT. And if applicable, the GNSO Council.

Underneath the recommendation, we did note that for clarity, while ICANN Org needs to implement the capability, Contracted Parties are not required to make use of the flag, as that is optional per the guidance. We also note, at the very end, that the EPDP Team expects ICANN Org to review their recommendation text during the public comment forum on the initial report and advise the EPDP team if anything further is needed to be able to implement the capability for Contracted Parties.

So that is the overview of this document. Again, the idea is that anything that the EPDP Team would like to require in response to the question about the Phase 1 recommendation should be stated clearly within this document, whereas the guidance document that we've been working on would also be included in the initial report. But as we've noted, that would be optional for Contracted Parties to follow.

I believe the idea, at this point, is we've made changes to that guidance document in response to the feedback that we received. And we'll talk about that a little bit later in the agenda. But the idea would be to freeze that document for now and have the team focus on this text—I think the deadline is Friday of this week—to

see what the team's initial reaction to this language and obviously propose changes and edits. And then, we would combine the two documents, and have the team check for consistency, and see if anything in the guidance needs to be changed as a result of this document. With that, I think I'll pass it back over to Keith for reactions.

KEITH DRAZEK:

Yeah. Thanks very much, Caitlin. Much appreciated, both the work that went into it and also running us through it. Just a couple of notes, from my perspective. One, I think it's important, based on the conversations that we've had as a group over the last several months, that we acknowledge that there could be and likely will be changes coming to our ecosystem and to the environment over the coming months and years and that the acknowledgment of that, in this language, I think is important, whether it's NIS2, development of the SSAD, or other factors. The consideration of this question may evolve because of external factors or changes to the environment in which we work.

So I thought it was important. And I think, based on the input from the team, I think that's an important point to be included at this stage of the initial report. To say that the question is not entirely off the table, it's more a question of whether, based on the factors that we have today, whether the group can reach consensus. And I think the answer, at this point, is clearly not but that it's not off the table entirely and forever. I see I've got a queue building.

The other question I wanted to point to is this discussion of flags. I know that we've had several conversations about flags. I see Alan

has his hand up in chat and may want to comment on this or something else. But Alan has mentioned this concept of flags. I just want to clarify for my own benefit. I don't want to stray too far from policy into implementation questions but I think it's relevant and I think it's potentially impactful.

I want to make sure that we understand, when we talk about a flag, whether that is an internal registrar flagging function that allows the registrar to differentiate in its output for registration data or whether the expectation ... And, Alan, I think this is a question for you, is whether you're wanting a flag to be displayed in the output. Those are two different things, I think, based on my understanding as to whether we're asking for an internal system flag that delivers a certain output or whether you're asking for, actually, an indicator or some sort of output saying, "The flag says this." And I'm sorry if I'm dumbing that down too much, even for me.

So let me stop there. I'll turn to the queue. Steve, you're next and Alan Greenburg after that. Thanks.

STEVE CROCKER:

Thank you very much, Keith. Let me just comment on the flag. Maybe one of the hang-ups about the flag is whether or not it's viewed as something that has to be done inside the system for every single registration or whether or not it's a global flag. A straightforward implementation for those registrars that don't want to use it is simply to have that noted in the way their system works. And then, for every query, they can simply, if it's required to note whether or not the flag is set, simply say the flag is not set.

They don't have to have separate implementation of that flag for every registration.

But I raised my hand earlier because with respect to the wording, where SSAD appears, about possible adoption of SSAD, I'd like to lay a path here in which we separate the concepts we're talking about from the specific proposed SSAD implementation. SSAD's just one of the many ways to implement differentiated access.

So unless the working group has committed, either now or previously, to be supporting SSAD as proposed, as opposed to differentiated access, I think our recommendation would be stronger about the things we're trying to get at if we simply reference "differentiated access" and not tie it directly to SSAD, which still has a number of hurdles to go through and an uncertain future.

KEITH DRAZEK:

Thanks, Steve. I see I've got a queue building. My initial reaction is that the work of this group, the EPDP Phase 2A, is a follow-on to the work from Phase 1 and Phase 2, obviously Phase 2 focusing on the development of the SSAD. So I think there's an expectation that with the SSAD having ... It's essentially approved consensus policy recommendations by the GNSO Council. Yes, it's pending with the Board at this point, subject to an ODP, operational design phase. There is the expectation that the SSAD is moving forward, pending some new information. Obviously, there are some hurdles that it needs to get through but it has been approved and it is something that this group is basing some of its work on.

Having said that, I guess my reaction is I don't think we should remove the reference to SSAD as a possible variable that could change or could impact—that could retrigger this group or at least the community's consideration of legal and natural implications. But perhaps we say, in addition to SSAD, we would say "SSAD or an alternate or alternative differentiated access model," or something to that effect.

STEVE CROCKER: I'd be comfortable with that. That would be great.

KEITH DRAZEK: Okay. Thanks, Steve. And again, like I said, I think the reference to SSAD is important.

STEVE CROCKER: I hear you.

KEITH DRAZEK: Yeah. Okay. All right, Steve. Thanks. And if there's others who feel differently or want to weigh in, please do. But, Alan, I'll go to you next. Thank you.

ALAN GREENBERG: Thank you very much. Look, registrars implement all sorts of flags. They implement a flag whether the domain's going to be auto-renewed. They implement a flag whether they may be using their internal privacy/proxy service. ICANN has nothing to do with the

flags that registrars set internally. The wording in the document, which isn't on the screen—well, it is—says ICANN must implement the capability for Contracted Parties to flag registration data when the registration concerns such and such.

That implies to me that we are talking about new fields in the RDDS, which is exactly what I believe is needed, at least for the legal/natural differentiation, if not the differentiation of the data itself. But given that, I think we must use the same language as was used during Phase 1 for fields within the RDDS. And Phase 1 had, I believe, five recommendations ranging from Recommendation 5 through 10, believe, that detailed specific things about registration data. Is it redacted? Is it not redacted? Is it transferrable from one party to another? There's a whole bunch of things.

So I think if we are specifying a new RDDS field here, which I believe we are because otherwise ICANN would not be involved in it, we need to specify all of the details that were specified for the existing fields in Phase 1 and we need to use the same language so there's no question about what we're doing. Thank you.

KEITH DRAZEK: Okay. Thanks very much, Alan. Much appreciated. Margie, you're next and then Marc Anderson.

MARGIE MILAM: Hi, everyone. I wanted to comment on some of the text above and question the language that relates to the NIS2 and the possible next steps because, as many of the members know, the NIS2

directive proposals seem to be getting stricter and require more of the Contracted Parties if the proposals are adopted.

With that in mind, I think we should really think hard about what we, as a community, think should be the next steps. Do we think that there has to be a brand-new PDP to update the requirements when there is the NIS2 directive adopted? Or is this a pause of the EPDP 2 until that happens so that you don't have to kickstart the whole process all over again with issues reports and go way back to the beginning.

A lot of us have dedicated many years on this group. And I'd like to at least see that when that happens, it would be picked up rather quickly as opposed to starting from scratch. So that's just something I wanted to flag for the team, recognizing that the NIS2 directive appears to be getting stricter at this point. And we very well may need to update these requirements.

KEITH DRAZEK:

Thanks, Margie. I think that's a great question, and a very good point, and something that we should focus on and discuss. I think the question is probably if, when, how, who. I think there's probably a good chance that this topic will need to be reconsidered and readdressed at some point in the future. I think the question is what recommendations can we, as an existing PDP working group, provide to the GNSO Council for its consideration.

And then, the question is naturally, obviously, if we're going to need to restart this work, we don't want it to take too long to do so.

But it the appropriate path putting an existing PDP working group on hold or essentially allowing the EPDP to conclude it work—Phase 1, Phase 2, Phase 2A—and then be prepared to restart the work in a much more targeted fashion when we’re talking about maybe a more specific question moving forward. We don’t have to answer that today. I think it’s a good question. But I think it is something that we should consider about our recommendations to Council.

Ultimately, it will be up to the GNSO Council and the broader community—the GNSO community—to decide, I think, the mechanisms by which the group reconvenes or is convened anew. But we can certainly make some recommendations along that line if we have consensus.

So, Marc Anderson, you’re next, then Chris, then Alan Woods.

MARC ANDERSON: Thanks, Keith. Can you hear me okay?

KEITH DRAZEK: Yep. Sure can. Go ahead, Marc.

MARC ANDERSON: Great. Thanks. I raised my hand, initially, to talk about the flagging section. But I do want to respond to Margie briefly here on NIS2.0. The language in the section that’s on the screen talks about how, “Some EPDP members are of the view that EPDP Phase 1

recommendations provide flexibility necessary to allow the controller to make this determination.”

I’m one of them. Here, I think, particularly in light of NIS2.0 but also in the face privacy legislation that is changing and evolving across many jurisdictions. And Contracted Parties face the challenge of doing business in many jurisdictions—in some cases, hundreds of jurisdictions. It’s extremely difficult to write a future-proof policy that can take this into account in all situations.

So from a Contracted Party house perspective, the current language that Contracted Parties are allowed but not required to differentiate between legal and natural persons really provides that flexibility. From my view the draft NIS2.0 directive and the proposed edits, no doubt many of us have seen, would require changes to Contracted Parties. But it would not require changes to policy because the current policy gives us the flexibility to adapt. So certainly, from my perspective, that’s a feature and an important one, I think. So I just want to go on record as making that point.

Whoever has the screen, if you could scroll down to the flag part, I would like to talk about that a little bit. I’d really like to unwrap this language a little bit. I know none of us had a chance to see this before the call. But as this is written, it’s pretty confusing to me. I don’t know that Contracted Parties ... I don’t know that we’ve had a chance to fully unwrap the idea of a flag. We’re certainly trying to consider it on its merits. But I’m not sure it makes sense and this language is certainly confusing.

I want to give an example. In Phase 1, we have a recommendation that registrars must provide registrants the option to consent to publish their data. So that consent would have to be captured in some way in a registrar's system. And we don't have a recommendation or guidance that that needs to be done as a flag. It would probably be a flag of some sort in the registrar's system. It would have to be captured in some way on their system. So it's really up to the registrar how they capture that. But per the requirements, they would need to offer that and they would need to capture that choice.

And then, as far as publishing that, in that example, it doesn't really, to me, make any sense that that flag would then be indicated in the RDDS output. So I'm having trouble understanding how this would apply on the legal and natural differentiation. I'm not sure it makes sense for us to have guidance to tell registrars that they need a flag in their system for capturing what kind of designation the registrant provided for those that choose to differentiate between legal and natural persons. And I'm also not sure it's a good idea to publish that flag. We're providing that as guidance for best practices. I know that's a discussion for later. But I'm not sure that is good guidance or is a best practice.

So again, I want to keep an open mind to this and try and understand it on its merits. But as it's written, I don't agree with the language that's there. I think it's confusing and I'm not sure it's a good idea.

KEITH DRAZEK: Okay. Thanks, Marc. And I'll note that Alan has provided some additional input in chat as well. So thanks for that. Chris Lewis-Evans, you're next and then Alan Woods.

CHRIS LEWIS-EVANS: Thanks, Keith. I'm sorry, Terri, but go back to section one. Thanks. So Margie and Marc made some good points on this part, I think. The recommendation, to me, obviously on a first read on this small screen here doesn't appear much different than what ICANN and the GNSO should be doing anyway—looking for changes in legislation or law that is going to require a policy change.

So I think it'd be worth considering some of Margie's points around if we do need to change it, what do we want to happen? Do we want the EPDP Phase 2B to start with the same framing as 2A? What do we want to do? Because otherwise, I think that just looks very much like ... That's business as usual, noting that legislation might change, which we know already. So I think there's probably some work we need to do there. Thank you.

KEITH DRAZEK: Okay. Thanks, Chris. Alan, you're next and then Jan.

ALAN WOODS: Thank you. To be honest, Marc actually covered most of my point. Just listening there to what Chris Lewis-Evans was saying, I mostly just want to add to this. There's a very clear distinction to build on what Marc said. The EPDP came about because the

policy, as we have within this industry, was at odds to what the law required. NIS2, even in its newly-rapporteured, amended stage does not require a change of policy.

If NIS2 is to come out the way it is, in order for us to implement that, the policy that we will rely on is bigger than ICANN. That is that Contracted Parties, in order to follow the terms of their contracts, must follow that law. That does not require a policy change to implement and I don't think it behooves us, in fact, to try and create a policy which states, in effect, when you get down through all of this, that Contracted Parties must follow the law. The only time you need a policy change is when us following our contract is at-odds to that law and that is not what is there at the moment.

In relation to what Chris was saying there, I completely agree. It struck me as I read that this is just basically what the GNSO Council should be doing. And we cannot continue to open the door for the EPDP so that we can jump because there is a potential that we need to tell people to follow the law. I think we need to be very clear. We can't outline something we don't have a clear idea.

Still and withal, we are before the first stage, the first reading in the European Parliament. We know that the ICANN team, very expertly-led with Alain and people like that, are going to be working closely with the European Commission and trying to talk about how this law is evolving. We do not have a clear idea of where this law is going to end up.

And we cannot lay the ground rules of a policy or a potential policy change at this point until we have more information. That is not the point of a recommendation. The recommendation is to change policy, not to put ourselves in a holding policy or a holding pattern of the EPDP, should, and if, and when this all happens.

So I must say I strongly disagree with the phrasing in number one here. I think we were asked a very specific question by the GNSO and I think we can answer that question without the needs to go to this extreme.

KEITH DRAZEK:

Okay. Thank you, Alan. I've got quite a queue building. Jan, Stephanie, Alan Greenburg, Hadia, Margie, and then we probably need to start moving on. And again, a reminder that our formal comments are required by the end of the week, Friday, on this particular section. But opportunity to discuss now. So, Jan then Stephanie.

JAN JANSSEN:

Thank you, Keith. I wanted to comment on the concern mentioned by Marc that Contracted Parties need flexibility and that there is a divergence of laws and laws that are changing. I want to comment on that because the way that I see it is that lately, there is much more—at an international level, much more convergence. And the law that we are taking here to guide us in this policy work, very much, and that we're looking at, is a law that basically everybody is looking at. That's GDPR and that is the developments in

Europe, which are the most severe privacy laws that are existing and are guiding many other jurisdictions.

It's very important to note that the place where these privacy laws were very much developed makes a clear distinction between legal and natural data. When talking about legal person data, we're not talking about personal information. And really, I think that it is very important for this group that we do not lose sight of where we are coming from. I think really, this EPDP starts with maintaining the WHOIS at the greatest extent possible while complying with the GDPR. Thank you.

KEITH DRAZEK:

Thanks, Jan. So we have quite a queue building and I'm going to need to cut the queue off at this point so we can move on because we do have to get to our guidance right up next. But if everybody could be brief or concise, I would appreciate it. So Stephanie, Alan Greenburg, then Hadia.

STEPHANIE PERRIN:

Thank you. I'll try to be brief. My first comment, with respect to what Jan just said, yes. The scope of the GDPR is clear. It applies to the data of natural persons. What is unclear is the definition of a legal person, globally. And I've said this before. That's where the problem lies. The scope is clear. The definitions are not. And they aren't likely to get clearer because there's no harmonizing influence on how different jurisdictions define a company as opposed to a natural person or a single-person-led business.

The second thing, largely, Marc Anderson has said what I wanted to say, probably more politely. I think it's a very confusing section. I'll try to get our comments in if the NCSG agrees. Furthermore, the Contracted Parties have an obligation to annotate their records to make sure that their documentation, as I've said before, of the consent from a natural person or the attestation from the representative of a company that is alleging that there is no personal data in the filing that he is making on behalf of that legal person, that has to be clearly recorded.

So telling people that they have to have a flag, solely for the benefit of third-party access is, I think, ridiculous. How they manage their documentation of their legal responsibilities is their business and they have no obligation to display that, as in yes/no/maybe, to other parties. And in fact, I think it is yet another risk to natural persons. If you're going to say "don't know," that's like drawing a bullseye onto that particular registration for various kinds of criminal activity, and spam, and you name it. So can we knock this off, please? Not to be too blunt. I think that'll do for me for now. Thanks. Bye.

KEITH DRAZEK:

Thanks, Stephanie. Alan Greenburg, you're next, then Hadia, then Margie.

ALAN GREENBERG:

Thank you very much. A couple of comments on what several other people have said. I'll start off with what Stephanie ended with. I tend to agree that somewhere in this document is says the

contents of this flag are legal, natural, or don't know. I don't agree that "don't know" is right. "Unfilled—" different than "don't know." "Don't know" is making an actual statement about what the registrar knows about the thing, whereas "empty" says it has chosen not to fill it in. There's a big difference between those two. Maybe "don't know" is also a valid answer but it can't be the only other answer other than legal or natural.

I agree with Marc that flexibility is good. And nothing in this policy, if it's worded properly ... And I already said, I don't think it's worded very well right now. Nothing takes any flexibility away because the field is an optional one to use. There's no obligation on a registrar to use it or not. So nothing changes there. And I agree with Alan Woods, when he started off, saying chances are, NIS2, even in the current versions, as the rapporteurs have suggested, will likely require policy.

But that's why this field, in fact, in the RDDS is necessary because should, in the future, it be required that all registrars, not just those who choose, do differentiate between legal and natural, presence of this field in the RDDS and in the public RDDS—I'll be very specific—is absolutely crucial. That allows the SSAD or other automated differentiation means to actually look at the public record and say, "There is nothing there which is private," and therefore it can automate the release of the information. That's likely to be a significant reduced load on registrars.

So it's really important that today we set the existence of the flag in the public RDDS so that, should the setting of it become mandatory due to some local jurisdiction, it can be used and it can

facilitate the kind of release of information on legal persons that we are looking for. Thank you.

KEITH DRAZEK: Thanks, Alan. And thanks for tying that all together. Hadia, you're next, then Margie, then Melina.

HADIA ELMINIAWI: Thank you, Keith. I don't have much. Actually, [Alan said] everything I wanted to say. I definitely agree with Marc Anderson that the guide needs to be as flexible as possible in order to accommodate the different business models.

KEITH DRAZEK: Hadia, I'm sorry to interrupt. Your line is cutting out. So if you could try to ... Let's give it another try, if you would, and if it's not working, I'll come back to you.

HADIA ELMINIAWI: It's fine. Alan said almost everything I wanted to say. I just wanted to agree Marc Anderson that the guide needs to be as flexible as possible in order to accommodate different business models. I also agree with him that the language in relation the flag is confusing but for different reasons.

The RDDS field has different purposes than the consent flag. The RDDS field does not necessarily lead to the publication of the data. However, it eases disclosure. It's consistent with the law. It's consistent with all known differentiation practices. It might be

disclosed. And we are now making changes to the RDDS so now is the time to require this flag. Thank you.

KEITH DRAZEK: Thanks, Hadia. Your audio was better that time. Thanks for that. Margie, Melina, Volker. Thank you.

MARGIE MILAM: Sure. I just wanted to remind the group that as we started this process, and when the temp spec was adopted, the goal was to stay as close to the old WHOIS system as possible—to the greatest extent possible, as long as we were complying with GDPR. So the goal was not to create the lowest-risk policy to the registrars or registries because there's a recognized benefit in having the information publicly-accessible and widely shared, as long as we're complying with the privacy laws.

And that's what you see in some of the statements that are made by the rapporteur in the most recent documents that were submitted—a recognition that the usefulness of the information needs to be preserved and available as much as possible, under the constraints of privacy law. And we all accept that, that the privacy law has limitations on what can be disclosed and publicly available information.

So I really challenge the Contracted Parties to look at it from that perspective. We're not trying to go to the lowest common denominator. We're trying to elevate the policy in a way that can be implemented across the world and allow the usefulness that is in the information for cybersecurity purposes, intellectual property

infringement, and all the other great purposes that we've all identified and are specified in the rapporteur report. So I just want to remind folks of that.

And as Jan said, new laws are going to probably make a similar distinction with natural and legal persons. So I think it behooves us to come up with a policy that gets us as close to the old WHOIS as possible, knowing that we have the constraints of the privacy laws. Thank you.

KEITH DRAZEK:

Okay. Thank, Margie. I did cut off the queue after Volker earlier. I see I've got another couple of hands. We will need to move on. So if folks could please be brief. I have Melina and Volker. Thank you.

MELINA STROUNGI:

Yes. Thank you, Keith. I have to agree with the comment made by Thomas earlier in the chat, that I have the feeling that we keep coming back on the same arguments over and over again. And I feel it is really important, in the few remaining to note some progress. From my side, I haven't heard a single valid reason why—apart from a presumed low-risk liability, I haven't heard any reason why redacted information that is not protected under any law is currently redacted.

But in any case, the proposition for flags, just from a technical feasibility perspective, just having the capacity and without any accompanying requirements about the data does not involve any absolute risk and I think it's very much in line with the guidance for the Contracted Parties who wish to differentiate. It can only help

them prepare. It's in line with future developments, such as NIS2 or the SSAD. Can be used for a lot of reasons. Make also Contracted Parties' lives easier. So I can't see any reason for resisting.

I want also to come back to a point which surprised me to hear, that someone said that they don't need a policy since there is a law coming in a few years. So my question is what are we doing here all these months? If all Contracted Parties want is to maintain the status quo and not really taking control and adjust the policy in line with what is expected to come, it seems to me as if doing nothing now and letting a law come to regulate, it's not a very smart choice.

Just to come back to the document, I want to agree with the point made by Alan Greenberg. If we go to point two of the document, if it's possible to scroll down a bit. Yes. So I would suggest deleting the "unknown" because I think it may create more problems than solving them. As I understand, in most of the cases, good faith registrants who have nothing to hide would not self-identify as unknown. So maybe this would lead to a lot of bad faith registrants manipulating the system and choosing to self-identify as unknown.

It also wouldn't help Contracted Parties in any significant way because, again, when the SSAD is implemented, if they want to use the flags for automatic disclosure or for any other purpose, having a full system with unknown flags, it's not much of a help. So I would suggest either deleting or really specifying that this should be only temporary with a follow-back to the registration to identify as a natural or legal. But absolutely not a permanent unknown flag. Thanks.

KEITH DRAZEK: Thanks, Melina. And thanks for providing a concrete recommendation to the text. Just a reminder, this text is available and feedback and comments are due by Friday. So, folks, please make sure that when you're putting your comments in, add them as comments rather than redline or changes to staff so easier for staff to track. Thanks. Volker, you're next.

VOLKER GREIMANN: Yes. Thank you, Keith. A couple of points have accumulated over the time while I was listening. First of all, I find it extremely frustrating that we keep going back over the same arguments—for example, the argument of the scope of the GDPR. I think we know by now that we have two different interpretations of what the GDPR actually means and what it protects.

We don't need to hear your opinion, our opinion on this every time. So I'm not going to answer that with my own opinion. I'm just saying that we have had the discussion ad absurdum and we don't need reminders what you think or someone thinks the GDPR means because there's no use in continuing the argument. He said/she said and we're getting nowhere.

Flags ... Ultimately, we collect those data for purposes. These purposes must be our own purposes or the purposes of the data controller, if ICANN is such a data controller, which is not quite sure yet. If we insert flags solely for the purpose of differentiating for the purpose of, for example, automated access, that creates a different kind of flag—basically, a red flag for data protection

officials that see that and might come to the same conclusion as for why the flag is there, the you are using for, why you want that flag, which is this is for somebody else's purpose.

We are suddenly no longer limiting ourselves to our own purposes. We're collecting data for third-party purposes. Therefore, having a flag might be a signal to data protection officials that we are actually collecting more data or making data available in a format that is not necessary.

To Alan's point that we need the flag to make the distinction possible if we ever need it, you can make distinctions without flags. There's various means of making a distinction between legal entities and non-legal entities and a flag is but one of them. So why should we choose this one over all others?

And finally, the point with regards to future laws, sure. We can provide for all future laws that may or may not come, ever. If we, for example, expect that a law might come down to prevent redheads from registering domain names, would we have to have a field for the hair color of a registrant? In a way, the threat scenario that Melina just displayed there, with if we want to be regulated, it seems to me that this law, NIS2 is, in some form or shape, coming anyway, regardless of what we're doing. So I don't see any benefit in doing something now that may not have any influence over that law that's coming.

And I think the rapporteur's added suggestions there shows that this law is still very much in flux. There is still very much that has to be changed, that will be changed as it goes through the negotiation stages within the EU. This report shows how much

there is still to discuss about this. So we cannot rely on anything that's written at this point.

And finally, in a way, I also welcome this new law that would require us to publish or disclose such data, simply because of the fact, then we would have a legal basis for disclosure. That is currently lacking. And with that legal basis in place, all of the problems with regard to a risk suddenly go away. I like risks going away. Sorry.

KEITH DRAZEK: Thank you, Volker. I did draw the line. I will give Marc and Mark a very brief opportunity to speak and then we'll move on. So, Marc Anderson and Mark SV.

MARC ANDERSON: Thanks, Keith. Just real quick, I want to say to things. I've expressed previous comments. Since day one of the EPDP, Contracted Parties have been committed to getting no-public registration data in the hands of those people that have a legitimate need to access that data, such as law enforcement, intellectual property concerns, and security researchers. We've been very clear about that from day one, while also protecting our customers' data from abuse. That has been our goal and we've been clear about that. That does not mean unlimited publishing of our customers' data.

And the other thing I want to say, I feel like the comment about new regulation and complying with the law was misunderstood. That was not intended to be an invitation for regulation to supplant

the work of ICANN and the ICANN multistakeholder model. The point of saying that is that Contracted Parties don't need a policy to tell them to follow the law. The law is what tells us to follow it.

So our point is that we don't need a law to be regulated. The point was that when a new law comes out, we're not sitting around waiting for policy to follow that law. We are perfectly capable of following laws without having policy. So apologies if that point has been misunderstood.

KEITH DRAZEK:

Okay. Thanks, Marc. Mark SV, last word on this one and then we'll move on. Thank you.

MARK SVANCAREK:

Thank you. Great to have the last word. My comment is that there were whole portions of this discussion that really confused me because they seemed to be saying that we don't need policy if things are already in compliance with the law, etc. My point is that having no policy at all, and just simply having the remark within the RAA that you must follow the law fits into that description. So what would be the purpose of ever having a multistakeholder policy development process?

So maybe I'm just misunderstanding some of the things that were being said here. But I just don't get why we're here if we can never create policy that is forward-looking, anticipates a law, goes beyond a law, things like that. Maybe I'm misinterpreting other people's overgeneralizations or not but I just have to say, I had

trouble following this. Hopefully the rest of the conversation will be more clear. Thank you.

KEITH DRAZEK:

Okay. Thanks, Mark. I'm going to draw a line under this one. I want to note that, again, this text is available. It'll be circulated via link and with the homework following the call. Please, everybody, get your input and feedback into the group and into the document by the end of the week. Staff will then do another turn on this.

And again, please, please focus on the text itself and provide suggested edits for improving the text with an eye towards reaching consensus on the language. We don't need to restate or reintroduce language that has been proposed before and set aside because there was not consensus. So please, as you're providing input, let's try to work towards some consensus language for inclusion in the initial report.

I note that there's been quite a bit of discussion about this flag issue. I hope that we can, as a group, come to agreement or consensus that the capability to differentiate is a worthwhile goal. And whether that's using a predefined or specifically-defined flag ... And what the purpose of that flag is may be a bit of a distraction. And it's not clear to me that we'll be able to get into and agree to the specifics around such a so-called "flag" but I'm just acknowledging that I think the capability for registrars and Contracted Parties to differentiate is an important concept at a minimum.

I know that registrars have the ability to do that in different ways. I guess the question is, is there some expectation of consistency? I know we need to allow for various business models and various registrars in terms of their systems and their capability. But I want to focus on a higher-level policy goal, rather than getting overly-prescriptive in terms of how we achieve the policy goal.

I completely understand the comments that Alan Greenburg has provided in terms of if we're anticipating the implementation of an SSAD or some other differentiated access approach, that having some consistency and having something on the front end, designed to be able to inform that is a potential positive. But I just want to make sure that we are trying to stay a little bit above the weeds on this one to make sure that when we're talking about an acknowledgement of policy goals, that's we're not being overly prescriptive. I'll stop there and we do need to move on. But please, everybody, provide your input to the text. I would appreciate that.

So let's move, then to the next item on our agenda, which is the discussion of guidance. And I think, as we go back to the agenda ... Yep. It's in front of me. I'm going to turn to Caitlin again for a brief overview of the main changes applied to the document. And again, folks, please, please, please focus on the text rather than restatement of positions that we've heard several times before. Caitlin?

CAITLIN TUBERGEN: Thank you, Keith. And thanks to all who provided feedback on the draft guidance. We've received quite a bit of feedback. To begin, I

wanted to note that we received several comments about the concept of a flag or a new defined RDDS data element. With respect to that, we just had a lengthy conversation about that. And we would recommend that everyone review the language from the consensus policy writeup document by Friday and please put forward suggestions on how you'd like to see that language change. And then, we'll take that conversation out of the guidance document for now.

I wanted to note that the Registrar team members have provided feedback with respect to their table, noting that the table itself didn't need to be included. But they felt that certain GDPR principles from the table weren't sufficiently highlighted in the writeup. So what we've done is we've called out these principles in the background information section so that those principles are called out and that registrars need to factor these in when processing personal data.

The next point I wanted to note is that there were several comments made in relation to instances where differentiation may not be possible at the time of registration. We did discuss this previously but in the agenda, we called this out as a separate question for discussion today so that hopefully we can resolve this topic to everyone's satisfaction.

Last week, we discussed the potential movement of the disclaimer language. It used to be at the end of the guidance. And that disclaimer language just notes that this isn't legal guidance. The EPDP Team isn't in a position to provide legal guidance and it's not their responsibility. It's ultimately the responsibility of the

controller. We've now moved that section to the beginning of the guidance section and removed it from the end.

We noted that we received several clarifying edits and textual edits. Most of these seemed to be non-controversial so we applied those. Where there were opposing views about the textual edits, we may have suggested an alternative approach in the text.

There were a couple of comments noting that there are instances where the registrant and the data subject are not the same. We just wanted to note that there is a footnote indicating that in the text. That was added to a previous version to make that clear.

We provided updates based on last week's call, namely that we added in the possible timeframe for scenario two. That's when an update is made following the registration of the domain name. That, we used the 15-day time period from the WHOIS accuracy specification in the RAA. We also removed the reference to third-party verification because there was no objection to removing that.

We did want to note—and I think Keith highlighted this earlier—that any time you have an issue with the language, it's very helpful for us if you provide a suggested modification in comments. In terms of edits that were either out of scope or that had been previously discussed, staff has provided a note, noting such.

Sorry. Just going through my notes. Lastly, as I mentioned at the top of the call, the idea is we've incorporated these edits. We've also noted where we didn't incorporate and edit, if there was a disagreement. But the idea would be to freeze this document for now and to focus on the consensus policy writeup this week.

And once we've gone through the consensus policy writeup and everyone has suggested changes, or edits, or concerns, that we can then combine the documents and focus, as we have in Phase 1 and Phase 2 on clarifications, textual edits, consistency issues between the two, and any "cannot live with" items for the group. But we exhausted all of the comments in the guidance write-up for now.

I think that is the end of the high-level overview of the changes. Again, we're not looking for additional edits at this time but we will share a link to the document that shows a clean version, that has all of the edits highlighted as well as the redline version underneath so that you can see that. I'll had it back over to you now, Keith, so that we can go over the remaining outstanding questions.

KEITH DRAZEK:

Thanks very much, Caitlin. Thanks for running us through that. And agree with the approach, in terms of timing, that for this week, our focus should be on the previous discussion and the previous text, more specifically, and to make sure that we can bring that in this week. And then, we'll shift to the actual substance of the text on the guidance write-up following that.

But let's focus on the remaining outstanding questions that are listed here before us. And Caitlin, I'll turn it right back to you, if you don't mind, just to run us through that. These are the questions that we should be able to discuss here briefly before we move on to the feasibility of unique contacts.

CAITLIN TUBERGEN: Thank you, Keith. So the first question that we go was there was some disagreement about when we should be calling the guidance. Should it be called best practices? Should it be called guidance? Should it be called something else? We did want to note that the GNSO Operating Procedures does specifically refer to best practices as an illustrative type of outcome. However, it doesn't explicitly prohibit the creation of guidance or another term.

But rather than talking about the semantics of what term we'd like to use, we thought maybe it would be a better use of the group's time to focus on the expectations of what this guidance or best practices would be once the Council or Board adopts it. What's expected from ICANN Org? Is there anything expected in terms of the Council or Contracted Parties in relation to promotion and communication of the guidance/best practices to Contracted Parties?

So with that in mind, rather than focusing on the term, we'd like to hear some feedback from the group on what the goal is of the guidance—what the group would like it to accomplish.

KEITH DRAZEK: Thanks very much, Caitlin. Let's open the queue. I see Hadia has her hand up. I just want to speak, though, very briefly to the point that Caitlin just referred to. And that is that best practices or something less than a full PDP consensus policy recommendation is a perfectly legitimate output from a PDP working group. In other words, we are not limited to only consensus policy

recommendations. Otherwise, we wouldn't be talking about guidance and/or best practices or whatever we decide to call it.

We've been using the term "guidance" and I think that that's still appropriate. But if others have a range of views on this, now's an opportunity. But let's focus on this particular question. Let's focus on our desire to develop consensus policy language for the initial report for public comment and to be a bit concrete and focused as we approach this one. So I have Hadia, Laureen, Alan Greenburg, Marc Anderson, and Mark SV. Hadia?

HADIA ELMINIAWI:

Thank you, Keith. Building on your suggestion to have the capability to differentiate without mandating the differentiation, I think it needs to be a [revision] to a policy that clearly states that Contracted Parties be capable to differentiate between natural and legal and [inaudible] the differentiation. And then, we accompany this with a guidance or best practice. It does not really matter. And then, do we answer the second question now or later?

KEITH DRAZEK:

Thanks, Hadia. Let's stick to the first question on the screen here first and then we'll try to get back to the second. So thank you for that. Laureen, you're next and then Alan Greenburg.

LAUREEN KAPIN:

Thanks, Keith. I'm just responding to the question. I think, in terms of expectations, whatever this is called—and I'll go back to that question in a moment—the expectation would be, certainly, that

ICANN Org communicates this and makes sure that this is publicized in a way that the affected Contracted Parties know that this guidance and best practices/or best practices exist because otherwise, what's the purpose? We don't want this to be buried somewhere and have no impact.

It seems to me that this would come along with an affirmative obligation to make sure that it is clearly promoted and communicated, and not just once, and also in a way that enshrines it in a place that is easily accessible. So those are some thoughts.

In terms of the language used, at least in my mind, I think that "best practices" is a term that carries a little more heft and weight. And the fact that it's consistent with the terminology the GNSO Council itself uses, to me, is another mark in its favor. So I would add that I certainly don't disagree that there isn't a prohibition against using some other terms. But my remarks are why I think "best practices" is a preferred term. Thanks.

KEITH DRAZEK:

Okay. Thanks very much, Laureen. Alan Greenburg, you're next, then Marc.

ALAN GREENBERG:

Thank you. Laureen said most of what I wanted to say. I also believe that "best practices" is a far better term because it does have implications. And probably the reason why Contracted Parties don't want to use it, it does have implications that this is

something that should be done. “Guidance” just doesn’t have that. “Guidance” is something that you can just toss away.

And remember, we are attaching with this guidance no measurement, no metrics, no reporting back as to whether it’s being used or not. This is something that could have been done by a group of registrars on their own without any involvement with us, saved a huge amount of ICANN resources, and would have the same results, and probably not be even looked at by many registrars and certainly be the ones that we class as bad actors, that are continually being discussed but not identified.

So yes. I think using terms like “best practice” is far more likely to result in something coming out of this than “guidance,” which I suspect is going to hit the circular bucket. Thank you.

KEITH DRAZEK:

Okay. Thank you, Alan. Marc Anderson, then Mark SV, then Volker.

MARC ANDERSON:

Thanks, Keith. On both these topics, as far as what comes next and what term, I’ll the Contracted Parties have been discussing these. And I don’t think we’ve come to agreement on what our preferences would be but it is something we’ve discussed. We’ve talked about, “Okay. We get to the end of this. The GNSO Council approves these recommendations, the Board approves them, and they go to ICANN Org to implement them. What does that mean for ICANN Org to implement them and what would make sense?” I

think it's a good question to bring up now. I'm not sure, from a CPH perspective, we have answers or recommendations.

On the terminology, the same applies. I'm not sure we have agreement here. There are concerns about using the term "best practices," some of which, frankly, Alan Greenburg enumerated but also, the term "best." The guidance we've developed are possible guidance for implementing differentiation between legal and natural persons. But are they the best? Who decides what is the best? As Alan pointed out, there are implications and ramifications for using the term "best practices." We're not sure that that makes sense here and that that is the best term to use. But it is a topic we're still discussing.

KEITH DRAZEK: Okay. Thanks, Marc. Mark SV, Volker, Margie.

MARK SVANCAREK: Thank you. Laureen and Alan covered most of the things I wanted to say so I won't reiterate them. Regarding Mark's concern, if not us, then who? I've been in other groups within ICANN where we've defined best practices—certainly good practices. But we haven't been afraid to use the term "best practices." We are all brought here to represent our stakeholder groups and I think we can collectively define what would be the best practices.

But also, Marc says, "I'm not sure how this is going to be used." I was working under the same assumption as Alan G., that if you say that something is best practices, it would be promoted more widely and publicized more clearly than something that's just

guidance, particularly since the document says, “This is guidance but it’s not legal guidance.” So what kind of guidance is it? It’s all very equivocal and weak, frankly.

So I think that best practices, I think that this group is perfectly capable of creating something that is best practices, although now that Marc has said it, I’m not exactly sure whether that creates the result that Alan and I think that it will create. So that’s worth more discussion. That’s why I support “best practices” as opposed to “guidance.” Thank you.

KEITH DRAZEK:

Okay. Thanks, Mark. Volker, and then Margie, then Alan Woods, and then I’m going to draw a line under this one. At least I will try. Volker?

VOLKER GREIMANN:

Yes. I was under the impression that we weren’t discussing how to name the baby and just look into what we want to achieve with it. And trying to lead us back to that subject, I think for us as Contracted Parties, this whatchamacallit should be useful.

First and foremost, it should be something that Contracted Parties can use, if they want to differentiate, that gives them some instructions on how to best achieve the goals that we want to achieve by it, that provides us with some arguments of why we should differentiate or not, if we decide to go down that path, and basically be something of a resource that also takes into consideration various business models that may exist out there and be a living document that would be subject to change down

the road if new facts come to light, new learnings are learned, new ideas are had.

And therefore, this whatchamacallit should be in a position that it is not policy but rather something that can be provided as, in the broader term of the word “guidance” for Contracted Parties. Thank you.

KEITH DRAZEK: Thanks, Volker. Margie, you’re next, then Alan. And I’ll put myself in queue and we’ll draw a line under this one.

MARGIE MILAM: Thank you. I’ve given a lot of thought to the words to use here. I do think that “best practices” is the right one. And I also want to call attention to the group that there are specific rules for creating guidance under the Bylaws and we’re not operating under them. We’re operating under an EPDP. And if you look at the Bylaws and you look at the operating procedures for the EPDP, it’s very specific as to what you can do and what you can’t do. It talks about policy recommendations as it relates to the temp spec.

So I would advise us to stay away from the word “guidance” altogether. And if you look at possible outcomes, best practices or policies are more appropriate for EPDP than anything called guidance, which is something else under the Bylaws.

KEITH DRAZEK: Okay. Thank you, Margie. Alan, you’re next.

ALAN WOODS:

Thank you very much. Two very quick points because I don't want to belabor it. Just in response to when Mark SV asked the question of who can help us with making this into a best practice. And I think the answer is that, very clearly, the European Data Protection Board has a path in Article 36 by which we can ask them to say, "Hey. We have got this plan. We've got this process. We've got this. This is something that we are going to present to you so we should present to you."

Up until that point, what we have is practice or [effective] practice. Once we get a green light from somebody who is competent to give that moniker of best practice, then we can call it a best practice. I think we really need to do that.

The second thing that I just want to also point out is when we're talking about guidance at the GNSO level and whatnot, we must remember we're in a slightly different playing field here. That is, usually ICANN talks about having policy as very distinct technical policy issues. They are the experts in the field, we have the remit, the competence of ICANN people here in this field.

What we're talking about here is the interpretation of laws, how it applies to the application of something. So again, we're not talking about the same sort of guidance or best practice. What we're talking about here is the application of law. And that is a very fine line. So when we're talking about best practices, we need to be very clear as to what message we are giving to the entire world here saying that we believe this is the best practice in order to follow a law. And also, I must caution there's a lot of things within

these documents which both the registries and registrars have said. We're not sure that this is the right thing to do. And if we're the ones going to be implementing it at the end of the day and we don't think it is a good thing to implement, I don't know how we can in good conscience call that a best practice.

KEITH DRAZEK:

Thanks, Alan. I'm going to put myself in queue, and then Mark Sv, I saw your hand up. I'll come back to you in a moment. Just a couple of observations here. Look, I think perhaps we should be thinking of this in terms of what we're trying to achieve rather than what we're calling it, and I understand that the terminology is important, but if the perception is that something called a best practice carries more weight in terms of its communication, dissemination, awareness and ideally uptake, then perhaps that's what we should focus on rather than the terminology. Is there something that the group can include in the recommendation, in the write up that would specify the expectations of communication, awareness, dissemination and uptake—or ideally uptake—rather than getting bogged down in the question of terminology?

And again, as we've had this conversation, I'm just thinking out loud here in terms of the terminology itself is that to me, guidance seems more like a policy question or a policy threshold. Best practices to me sounds more—or at least getting closer to— an implementation. And we've talked a little bit about the need for variability of implementation based on business models, etc.

So I'm just thinking out loud here in terms of the discussion right now. But I'm hoping that we can, rather than sort of spending a

week or two talking about two different terms, that we actually focus on the goal of using one over the other in our comments and the input. So, Mark Sv, last word on this one, then we'll move on.

MARK SVANCAREK:

Thanks. Alan, thanks for reminding us about the data protection board. You've mentioned it before, and I will try better to remember that in the future. That's great feedback. I do want to point out though that the DNS Abuse Institute, in their mission statement, they say establish best practices. And I'm not sure whether that means that there is an intent to bring that to some authority. It seemed to me that it just simply meant in some general and nonstandard way, establish best practices.

So I don't think that the term is as radioactive as some people seem to feel. I still prefer it—Laureen has a good intervention in the chat that further clarifies what I'm thinking. Thanks a lot.

KEITH DRAZEK:

Thanks, Mark. Okay, with that, we'll draw a line under this one. Just to remind everybody, please spend some time in the document, work within your groups and provide direct input to the text around the guidance writeup, and let's make sure that we have input there. Again, please provide comment, not redline, to the text so that staff can better track and incorporate.

All right, with that, we have just about seven minutes left. I want to turn to feasibility of unique contacts very briefly. Caitlin, if I could hand it back to you for just a quick touchpoint on the feasibility of unique contacts.

CAITLIN TUBERGEN: Thanks, Keith. And again, thanks to everyone who provided feedback. What staff did with that feedback is similar to what we did for legal versus natural. Namely, we have a Google document that shows the clean version that includes updates, and below that is the older version that shows all of the comments.

There were two main outstanding questions that we'll probably be covering during Thursday's call, but I'll quickly tee them up so you can consider them for Thursday's call. First, there were questions and comments related to the definitions that were proposed by the legal committee. These were sent to the EPDP team several weeks ago and were what were included in the questions that were posed to Bird & Bird. I will note that there seemed to be some discomfort with the bracketed language about across registrar versus across all registrars or within the same registrar.

And I just wanted to note for clarity for the folks that were confused about that, the legal committee didn't opine on whether the unique identifier would be across registrars or within one registrar, because it was a policy question, not a legal question. So that's why that's not defined and was left open in the question. And I think that the legal guidance that we received does talk a little about the difference of risks between across one versus across all.

Secondly, there again were some comments about the expectations for webforms. As a reminder, this is included in recommendation 13 from phase one. We've noted that this has been expressed earlier in EPDP phase 2A discussions. We

flagged this with the Implementation Review Team to see where in the process recommendation 13 was, and the feedback that we had received from our internal colleagues is that there were no concerns raised with how that recommendation was being implemented. So we wanted to note that. And in light of that, the team needs to consider what, if anything, should be added to the initial report on this topic. But those were the two main areas where we received feedback on the feasibility document.

KEITH DRAZEK:

Thank you very much, Caitlin, and again, thank you for running us through that. Folks, we have just about four minutes left, so again, next steps on this one is for the EPDP team to review the updated version of the writeup and flag any comments or suggested edits by this Friday. So please, again, spend some time on this one. I think, again, the question of webforms, staff did some checking internally, and I think there's also quite a bit of overlap between this group and the IRT from phase one.

And as far as we understand or have been able to discern, there's been little to no discussion of the inadequacy or challenges with webforms, either with ICANN Compliance or certainly the IRT on phase one. So I would encourage folks who are experiencing those issues which are taken onboard and are legitimate concerns to please raise those in the appropriate venue, acknowledging here that those concerns are understood and legitimate in terms of the functionality, but there are other places that those issues should be raised.

With that, let us turn to a review of the homework assignments. Again, just to reiterate—and these are both by this coming Friday—EPDP team to review the proposed legal and natural question one writeup for the initial report and also to review an updated version of the feasibility of unique contacts writeup for the initial report. We will then turn to the guidance writeup next week, but these are the two homework assignments for this week.

So please, everybody, spend the time, and spend the time in the document with the text providing comments, and let's try to be targeted and focused in proposing language that would bring us towards consensus or to an agreed to position rather than restating things that we've talked about before.

With that, with two minutes left, I'm going to pause and see if there's Any Other Business. Next EPDP meeting will be this coming Thursday, the 13th of May at 14:00 UTC, our normal scheduled time. So let me just pause and see if staff has anything else for us at this point or if there is Any Other Business.

Okay, I'm not seeing any hands, so with that, I think we can conclude today's meeting. Thanks all for your attention and for joining and for participation, and please do your homework before the end of the week. Thanks all.

TERRI AGNEW:

Thank you, everyone. Once again, the meeting has been adjourned. I'll disconnect all remaining lines and disconnect recordings. Stay well.

[END OF TRANSCRIPT]