
ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the Registration Data Policy Implementation IRT call held on Wednesday the 18th of September, 2019, at 1700 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom Room. If you are only on the audio bridge, could you please let yourselves be known now. Thank you, hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking, to avoid any background noise. With this, I will turn it over to Dennis Chang. Please begin.

DENNIS CHANG: Hello everyone, welcome. This is our IRT Meeting #9, so let's get started. Agenda today, we will quickly look at the IRT work assignment and then we're going to talk about Rec 27, Policy Impact Work Plan. The reason that we do want to talk about this is because we have a meeting GNSO Council has asked us to brief them and invited Karen to come and discuss it for 15 minutes, so before Karen goes there, we want to make sure that the IRT is on the same page and there are no surprises by the IRT, and we're going to quickly look at our work plan together. And then we'll move on to Rec 10 publication, Approach 3 was under discussion last time, so we'll pick that up, and then move on to 11, 12, 13, 14, 15, 17, and so on. Let's go.

So, no change to IPT IRT, no change to the observer list, so our team remains steady now. So, Karen is here in the room, just joined us. What we will do, then is switch over to Rec 27 conversation and why

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don't we have Karen tell us quickly about her invitation to the GNSO Council briefing tomorrow. Go ahead, Karen.

KAREN LENTZ:

Thank you, Dennis. I think most people have had a chance to review Recommendation 27 document that Dennis included. This is also a document that was shared at the same time with the GNSO Council, as it impacts existing policies, as well as the EPDP work. So, I will be giving, I believe, a brief update and being there for the Council discussion of the status and plan for Recommendation 27 on the call.

DENNIS CHANG:

Thank you, as you know, GNSO Council meeting is public in terms of listening, and Andrea has provided you the link to the browser and the i-tune, so you can listen if you are so interested. Thank you, Andrea. This link here is for the Rec 27 work plan that we have shared with you in the IRT folder, and this is what it is. So, what I would like to do is see if there is anymore comment. It seems like there is a couple comments from the IRT and it looks like Karen has already addressed it. I'll provide an opportunity to Sarah, Eric, and the IRT members if there is any further questions about this. Any hands up? Sarah, you have your hand up, go ahead.

SARAH WYLD:

Thank you, hi, this is Sarah. Regarding the schedule question that is up on screen right now, thank you to you and to Karen for pointing out that is indeed in, just much lower down towards the bottom of the

document, so I was glad to see that, and that does resolve that question. Thank you.

DENNIS CHANG:

Okay, can you resolve that comment? Or I can resolve it. Thank you. Okay, next question or comment is from Theo, oh it's an idea. Yeah, Theo right now our team is going through the policies and this is one of the exciting opportunities that we are coming across. Maybe we will find one policy that we can go ahead retire as part of this activity. So, thank you for the suggestion and we'll be looking forward to finding one, and if you see anything that you want to suggest, please feel welcome, let us know which ones you would like us to target to look at. So, I think we can resolve this one, Isabelle, would you mind? Thank you. Continuing down the line, we have Beth who asked the question, plus one from Sarah and Eric, and Karen responded. Marc Anderson, you have your hand up.

MARC ANDERSON:

Thanks Dennis, this is Marc. Can you hear me?

DENNIS CHANG:

Loud and clear.

MARC ANDERSON:

Great. So Dennis, I had a question and I wasn't really sure the best forum to ask it, so I'll just throw it out here. I was wondering about this when I was looking through the document. In Marrakech there was a

cross community session on this topic and I believe Keith Drazek facilitated the session and had sort of an initial list of policies and procedures and there was sort of community dialogue on this topic covering a lot of these policies and procedures. So, my question was are you aware of that? Did it factor in to your document and your work? And if not, I might suggest you go take a listen to that session, I think it provides a good starting point and you can also gain some insight to the thinking of the community from that session. Thanks.

DENNIS CHANG:

Thanks, Marc, yeah, we're well aware, we actually supported Keith in conducting that session, and afterward we chatted with him, and this whole activity, we are coordinating closely with Keith, and Keith asked us to put this whole plan together. And Karen has been in contact with the GNSO Council leadership team in regards to this, and that's why they are asking Karen to come back and talk to them about what's happening.

There will be a status report, but maybe we'll gain some more feedback from them live. We'll let you know when they tell us anything. The whole process, as you have probably read here is that we're putting this whole thing together, but IRT will be our first team that we're going to depend on for review of this activity. So you will be kept in the loop. But know that we are working with GNSO Council closely. Karen, do you want to add anything?

KAREN LENTZ: No, I think you covered it, Dennis. We indeed have taken into account both the dimensions that are part of this review, what are we actually looking at, as well as the feedback that we got from the community during the session at ICANN65. Thank you.

DENNIS CHANG: Marc, do you want to say something again?

MARC ANDERSON: I do, yes, and first, thanks for answering my question. I was rather hoping that would be the answer but it wasn't immediately clear to me, so I wanted to ask. So I had a second question I wanted to ask. I guess you partially answered it just now, but I want to make sure I understand it. I guess I want to understand when it comes to Recommendation 27, what role you see for ICANN Org, what role you see for the IRT, and what role you see for GNSO Council on this. I know in Recommendation 27 the language recommends that updates are made to the existing policies, but it doesn't really assign an owner to it. And so I'm just wondering how you view this. I think it's probably something that will have to be done jointly, but if you could maybe speak to that, I think it would be helpful if we're on the same page here.

KAREN LENTZ: This is Karen. Thank you, Marc, for the question. You're correct, in Recommendation 27 it doesn't actually say who is responsible for doing what. The plan as we have laid it out here is for the role of ICANN.org be to perform a review of these existing policies and procedures,

identify areas that we believe are impacted, and then share those with the IRT, and I think the IRT would have a couple jobs.

One is to add anything that we may have missed, if there is some other area in a process or language in a policy that's impacted that we haven't identified, to be able to add to that. And second, to validate the path that each of those things would take. I think we're mindful that there are different levels of impact that we might identify, for example, in one case you can just remove the admin contact from a section and that's really the only impact. In other cases, if there is deeper impact on the process and in some cases it might cause us to reexamine where this existing policy or procedure fits under the new policy recommendation. And so each of those things has a path.

So for things that are consensus policy, we expect that we would identify those and provide those to the GNSO, who would make determinations on what policy work or other actions they would want to take. If we think there are other paths for things that we identify that would impact an operational procedure, that we would find a way to be transparent and propose how we would address that. There may be other items that impact the existing agreement and so really the intent is to make sure that everything goes down a proper path, and that's the other thing that I think the IRT is important, is validating and making sure that there's agreement on this, these set of things, policy level issues, and these other things, that could go down these other paths. I hope that helps. Thanks.

DENNIS CHANG:

You're right, the recommendation is unclear, who needs to do the work, but I think we're involved and it's up to the IPT to figure out and at least make the proposal on those work assignments, and this work plan is an attempt to do that in coordination with working with the GNSO Council and you, now. And of course, you see that there is work to be done by the ITP, IRT, GNSO Council, and also EPDP Phase 2 team, it seems like. So we will have to carefully carve those things out before we take any action. We'll try to make this clear, and when we go to the public comment, that's another place where we will be receiving feedback from the community on whether we got this in a reasonable way. Anything more?

Let's go back to this, is there a suggestion here? Is Beth on line? Sarah and Eric, any comments on this? How do we resolve this feedback or comment? Sarah's satisfied. Okay, let's just leave this comment as is, I hate to resolve it when Beth isn't present, but Karen is going to go forward without any changes to this plan based on this comment, basically. Here is another one, provide links, and I think Karen did that. Is there further action here, Sarah? Is there another request?

SARAH WYLD:

No, I don't have any further actions. I was thinking, I think I have a question that I've answered already, but I'm already half way through saying it, so the IRT members will be reviewing the plan of action as ICANN puts it together, is it possible that the IRT would wrap up before that's done? Is scheduling going to be an issue?

DENNIS CHANG: Let me see.

SARAH WYLD: I guess the answer is no, if we're not done yet, then we're not done yet.

DENNIS CHANG: Yeah, I have to understand your question, let me approach it from a different perspective. IRT is done when we, number one, our first major milestone for the IRT is put something out for public comment, right? That's our first milestone. The second milestone for us is publish no policy and issue legal notice, looking ahead, you have to think in those terms. And after that, however long it takes to implement and whatever the effective dates that we set, IRT is intact until the effective date, because who knows, during the implementation they may have questions and we may have to help. So, IRT will be together until the effective date of the policy and once the policy is effective, is past the effective date, IRT then can disband.

Now, having said that, whatever we're doing here in terms of planning for changes to the impacted policies, as Karen mentioned, as some of these policies will have impact, I think they will, and then we're going to propose that they be revised, but IRT does not have the power to do that. Only the GNSO Council can initiate a policy change through the PDP process. So we're going to put it on them as they considerations for policy revision and it's up to them to take as long as they need to, to make that happen.

Now, if that takes much longer than the policy effective date, then the IRT will not be able to review those things, but you will be able to review it as policy of the working group or other activity, of course, it's not going to be happening behind the scene in any way. I'm trying to be very careful about scope management here, because if we're not careful, this policy implementation can be everything and all things and it will never be done. Does that help, Sarah? I'm not sure. Okay, I think that was a confirmation of yes. So, Isabelle, can we resolve this one? Okay. So that being said, there is no more comments from the IRT, so I'm going to close Rec 27 for IRT discussion now.

Okay, next on the agenda I said was Rec 10, so let's go to Rec 10. We were discussing this last time we met and we were talking about Approach #3, and we had established agreement and we got to here and we kind of all realized, yeah, this is WHOIS-centric and in the RDAP world maybe this doesn't have any meaning. And I recall somebody saying that they may be able to come up with some words to replace this or instead, but we haven't seen anything. In the meanwhile, what I did is I added 7.5 and in the 7.5, I suggested "may" for the domain name period. Marc Anderson, go ahead.

MARC ANDERSON:

It's Marc, I just wanted to acknowledge the Action Item there, that I volunteered to work on some revised language there to make it less WHOIS-centric, and I have not forgotten that and am still working on it. I would like to note that and also note that on the RDAP pilot working group I updated that group on the same Action Item and they were supportive of that, as well. So just noting that there was agreement

that that was the right approach from that group, and that they are also available and willing and able to help and assist in that, if need be. But I still have that Action Item and I haven't had a chance to wrap it up, but will hopefully get something out to the full list shortly. Thanks.

DENNIS CHANG:

Thank you very much, Marc. I think as long as the IRT is conceptually in agreement in principle, I think we can continue to move ahead, because there is going to be a lot of wordsmithing at the end, anyway, and this kind of thing is actually easier to handle later, because we all understand we're on the same page and we do want to go toward the future of RDAP and get away from WHOIS, we're trying to do that as a strategy or as a need in a big way in everything we do.

So, our new policy shouldn't be hung up in the old legacy language. 7.5 is something that I'm offering for you to consider, I haven't seen a response, but I think by using "may" here adding it the exception list, we are handling the name server IP addresses in a simple way. So it's up to you, IRT to review that and comment. If you have comments now, you can make them, otherwise we'll continue. Marc your hand is up, is that a new one?

MARC ANDERSON:

Yeah, new hand. I think two things real quick, I'll noodle over 7.5 a little bit, I think that language may work, overuse of the word "may" there, but I think it's important to remember that registrars likely will not have the IP addresses, so I think in most cases the registrar couldn't publish that, even if they wanted to, and in some cases the registry operator

will not have the IP addresses. The main language I think might still be sufficient, but I think that's just a quick hit consideration that I want to throw out.

Also, back to the previous point about 7.1 being less WHOIS-centric, I forgot to mention that when I provided this update to the RDAP Pilot Working Group, they did caution me that making it less WHOIS-centric is obviously the right path, but they cautioned against making it too RDAP-centric as sort of an over-adjustment. They said to the extent possible, policy language should be technology agnostic and so I'm endeavoring to do so, and I think clearly there is support for making sure it's not WHOIS-centric, but they did caution me against overcorrecting. So just an additional point that I wanted to pass along. Thanks.

DENNIS CHANG:

Yeah, it's actually a really good point. I think we should keep that in mind as we go through the rest of the policy language, too. Please do note that we do have the implementation note section we can use, addendums we can use, there are educational help guide, independently. We, meaning the IPT, are going to work on when the policy gets firmed up and it's on us, we're are going to generate a bunch of educational material to help the contracted parties which we will bring to the IRT for review, if you don't mind. So, there are many vehicles to get our messages together.

In terms of policy language, yeah, I'm all for making it as brief as possible, technology-agnostic as possible, making sure that our principle

is intact. Thank you again for your efforts and on the RDAP working group. That's a good connection we have with the RDAP working group, we don't want to lose that. So, 7.7 is done, so we're going to move on to #8, and we were looking at, let's see, here, I am, is this me? I'm suggesting, this reflects the comment from the IRT meeting from the last time I guess we met. So, I'd like to accept this comment, I don't see any other comments objecting to this, and I didn't hear any objection last meeting, so instead of making this "must," if we make it "may," it's okay? Okay, Isabelle do you mind resolving that one and accepting the "may"?

Okay next item we're going to come over is Rec 12. As you know the IRT had asked us to postpone the discussion and just to give you quick news on the Rec 12. I'm aware of letters going back and forth between the Board and the GNSO Council. So I think they're going to try to come together on a decision, it's not likely to happen probably before the ICANN66. As for me, I'm okay to leave it like this, if you guys are okay, too. In the ICANN66 briefly, it's my goal when we get to ICANN66, let me just show you, this might be a good time, let me show you, of course we're going to have three meetings in October, that's what we planned, and then following that at ICANN66 in Montreal we have two long sessions.

I think by that time we will be able to have a full policy language together and the implementation plan together, so we'll be looking at the whole sum product in two successive sessions. Yeah there will be plenty of coffee, I promise you, I need it too. For me it's earlier because I'm on the west coast and this is on the east coast. So I just want all of us to be thinking that way so we can plan in our heads, that's what

we're all after. Let's build a common goal so we can head that way. Alright, so let's get back to our, Rec 12, we're going to leave it this way for now, and we're going to move on to #9, which is the law file.

We said the we wanted to talk about this and think about it, too bad Beth isn't here, Beth wanted to think about it, so we kind of put a hold on this. Sarah wanted to add this, and I think I told you that I particularly would rather not add the sentence, but Sarah crafted the words for "best consideration," but Beth isn't here and I haven't seen any other comments. So I think we can just leave it like this for now and move on. I would rather delete this sentence, maybe Sarah can retract it? What do you want to do, Sarah?

SARAH WYLD:

Hi, this is Sarah. The sentence that you're referring to is when the log must include the date and time, that sentence? I do not have strong feelings as to whether that sentence should be included, or not. I think that it's sufficient without that sentence, because without it we know what not to include, so we can figure out what to log. I kind of thought that got in, not because Beth asked for it, I thought there was a conversation with Brian, perhaps, a couple weeks ago, and I think maybe Beth, well, definitely we should wait for her to get further input, because I think she had something she wanted to include about that. But I don't personally feel strongly about keeping it. Thank you.

DENNIS CHANG:

Yeah, I remember you were trying to help them by suggesting this. Thank you for that clarification, Sarah. Any other comments on this?

Okay, so we'll leave it and we'll move on. Next item, so this is Rec #14 on privacy policy. We may have briefly discussed this but there wasn't anything controversial about this, and I think we're okay with this language. Was there any other discussion you wanted to have? If there isn't, we can move on to #15.

Okay, we're moving on to #15. This one was a retention requirement. This is an important requirement discussion. So let's talk about this first. Registrars and registry operators. I added the registry operator based on a suggestion by an IRT, I forget who. The recommendation letter, recommendation language suggests that it's registries and the registrars and it mentions contracted parties. So, that suggests that the policy recommendation's intention is to create a common retention requirement for contracted parties and registries and the registrars. So, is that okay? I think that would make it easier for everyone and cleaner, but I want to hear your comments. If no comments, we're going to leave it that way, then. Marc, go ahead.

MARC ANDERSON:

Hey Dennis, it's Marc. I don't have a comment right now, I'm scrambling to go back and read the initial language and react to what you just said. So, I'll maybe just put a marker out there that I'm not sold on that change.

DENNIS CHANG:

Yeah, okay, that's fine, that's fair. Okay, and the other topic is really about the fact that this is basically 15 months following the registration plus 3 months to implement, this language of "resulting in 18 months."

So, to me, it's a retention requirement for 18 months after the life of the registration. So it's as simple as that. So, that's what we have here. Is there a comment on this? Jody, go ahead.

JODY KOLKER:

Thanks, this is Jody. I guess I'm a little, the policy language says that we must retain it for 18 months, but are we saying with 15.3 there that the registrars and registries may have a policy that's less than 18 months or 15 months, depending on what it is, depending on law or any kind of legal issue? Is that correct?

DENNIS CHANG:

Yeah, that's correct. That's how we understood the recommendation that a contracted party needed flexibility based on their own legal needs to retain it for less. Somebody correct me if that's wrong, or confirm. Marc, go ahead.

MARC ANDERSON:

Thanks Dennis, this is Marc. I think what you said is essentially correct. The language and the recommendation was meant to maintain the ability that registrars have in the 2013 RAA to go through the waiver process to get a shorter retention period if they have applicable laws that prevent them from retaining the data for the 18 month period. So I believe today in the 2013 RAA it gives a 2 year retention period, but then allows a waiver period to reduce it if there are applicable laws that require it. So that's what this is specifically referring to and the intent of

the EPDP team was just to make it clear that we wanted registrars to retain that ability to request a waiver if need be.

DENNIS CHANG: Jody?

JODY KOLKER: Should we remove the "must" then from 15.2? If it's just going to be based on what the registries and the registrars legal, what their responsibilities are legally?

DENNIS CHANG: No, we cannot remove the "must," because if we use another word like "may" then there is no real requirement, it's up to everyone to do their things in their own. So, "must" is there, but it does provide an exception by part 2, as I think was intended by the recommendation.

MARC ANDERSON: Okay, Dennis, I guess I'm just a little confused on having a "must" in there and then basically just stating that legally the registrars and registries should follow their own laws. It seems kind of a little, what do I want to say, silly, I guess. We say must, but registrars and registries should follow their own legal advice.

DENNIS CHANG: Yes, that's correct. That's how the policy actually works. We establish a standard baseline requirement and exceptions may follow, based on

where you are, we've got a whole bunch of conditions coming our way. So, if somebody was to ask you what is their retention policy, we have to say 18 months after the life, right? That's the requirement. And then we can have a continuing discussion about who you are, where you are, and what you're doing. Marc, go ahead.

MARC ANDERSON:

Hey Dennis, it's Marc again. I'm just re-reading the part 2 language and listening to what Jody said. I think maybe this might help a little bit to split this into two parts, because there are sort of two related concepts in this recommendation.

So first, in the recommendation we wanted it clear that registries and registrars, if they had a reason to, they could always establish longer retention periods, you know, they didn't need a waiver or permission to do anything special to retain the data longer. So, I think that's the first concept that part 2 is trying to capture, is that registries and registrars are free to establish a longer period of time, for whatever reason they deem necessary. But the concept in here is what I just spoke about, requesting a waiver for a shorter period of time, and that registrars should still have the ability to do that under the 2013 RAA.

So, I think these are two maybe related concepts, but because they deal with different things and different processes, it might make sense to split it out. So, my suggestion is have one section that makes it clear that registrars can still request a shorter period if they have local laws that require them to, and then the other section, I see you're doing some editing on the fly there, but the other section making it clear that

registries and registrars are free to retain data of longer periods of time as necessary.

DENNIS CHANG: Go ahead, Diane.

DIANE PLAUT: Thank you, hi Dennis. I'm going to make a suggestion that is similar to Marc's but just a little different, a different variation based upon legal considerations, and that would be to have a .1 and .2, like is being said, but rather than saying nothing in this policy prohibits from setting their own retention periods, because much to the point raised earlier, there was concern that was too much leeway, it would be from setting retention periods for periods longer as legally permissible, or filing retention periods required by law, legal proceedings or other appropriate legal bases. This is because certainly you can't retain data indefinitely without a purpose or legal basis. So we want to make sure that the retention periods are for as long as legally permissible or for purposes of required by law, legal proceedings or other appropriate legal bases. So that's what I would think needed to be the two points.

DENNIS CHANG: I think what I'm hearing, Diane, is note 1 and 2 is separate, let's think about it in a separate note. So, if you need to retain longer, then you can, if you have legal basis to do so. But if you want to retain it shorter, then you have to come waiver procedure, or is it the other one? If you want it longer than 18 months and you have legal basis, you just go

ahead and do it, nothing else ICANN has to do. But if you wanted to do it shorter, then you have to come and get a waiver like you have always needed to do. Is that concept, Diane?

DIANE PLAUT:

Yeah, exactly. I think that now, what I see on the screen here, it basically, the only change that I think would need to be taken out would be, I would say to take out "setting their own" I would just say nothing prohibits them from setting retention policies, if required by law, so that there is not such a discretion indicated. And then otherwise, I don't know why we need "for the avoidance of doubt," we're just trying to make a statement in note 2, and we would just say they don't need to seek a waiver for longer under their own controllership if legally permissible. Because certainly isn't just about controllership, it's also about whether you have the ability to retain it for a certain period of time, or the legal right to do so.

DENNIS CHANG:

Thank you, Diane. I think we have the concept, so we'll go ahead and redraft it and propose it back to the IRT for the next review. So, shall we move on to the next item? The next item was #17.

SARAH WYLD:

If you could go back to the retention, I think there were a few people, including myself in the chat who wanted to go back to the question of the transfer dispute resolution policy. So this recommendation was very specific as to the reason for retaining data, which is required, any

time there is any kind of data processing activity including retention, there has to be a purpose identified ahead of time. So shouldn't the policy be similarly specific? I'd like to hear the group's thoughts on that, thank you.

DENNIS CHANG: Roger?

ROGER CARNEY: Thanks, Dennis, this is Roger. Yeah, I completely agree with Sarah. I think we can't really say "must retain all data collected," the recommendation was very specific to the data that is required for the transfer dispute, so I think we need to modify that, as well. Thanks.

DENNIS CHANG: Diane, did you have your hand up?

DIANE PLAUT: No, I didn't, but I will say that I totally agree with Sarah, thinking about this further, that's why I said data retention under their controllership is not enough, it has to be for legally permissible purpose. So I think that we do definitely need more specificity here.

DENNIS CHANG: Okay, Marc Anderson next.

MARC ANDERSON: Everybody else already said it, I just agree with what others have said.

DENNIS CHANG: Okay, thank you. Alright, any more comments on Rec #15? Otherwise we'll go to the next one, which is #17. This one we listened to you the last time and we are proposing a new approach. So, if you had a chance to review it, you can give us a comment now, or you can do it later, it's not a big deal, actually. I think this is an elegant way to address your concerns that we start talking about whether this applies to the redaction only or other parts. Okay, no comment. Okay, we'll keep moving.

So, Rec #19, we're going to create a new section on the policy, basically it's asking for a DPA, so we're going to create another section and we're going to call it Data Processing Term concerning gTLD registration data and as a part of, and I see that Sarah has made some changes, I like the processing instead of collecting, publishing, and transferring. Can I accept this? Any hands up? I want to accept Sarah's comment, I think it's a good one, and the second one is relevant third party provider, Jody is asking a question, Sarah and Reuben responded. Is there a relevant first party provider?

I'm not sure if I understand the comment and the question, is there a discussion here? Or is there a suggestion to change something? Or is this simply a question that Jody asked and got a satisfactory answer? Let me ask that. If so, I want to resolve it, of course. Jody, are you satisfied?

JODY KOLKER: Dennis, right now I'm reading through my comments again, this was a month ago, so I'm trying to figure out what I was talking about, can you give me a minute? Thanks.

DENNIS CHANG: Yes, of course, take your time. The other thing that I was going to really ask you, ask the IRT, is what do you think about the pace of this implementation, do you feel like you're being rushed? Because I certainly don't mean to do that and this is so important and so far reaching, and such a core function of our work, that we need to get this right. So, let me know if you need more time. And we'll try to do the bulk of the work at the IPD, of course, we're doing that, and putting it together, but I certainly don't mean to rush you. While Jody is looking at this, Marc, did you want to speak?

MARC ANDERSON: Hey Dennis, just commenting on what you just asked about, pace, Sarah said she's happy with the pace and Eric is giving her a +1. I agree, I don't think the pace is too fast or too slow, but I did want to comment, having the IRT meetings every other week, I just note that two weeks between calls sometimes makes it a little bit challenging to figure out where we left off and where we picked up. I pick on Jody for a second and just note he's having trouble remembering why he posted that last comment.

I say that, you know, I don't want to advocate for more meetings, I have plenty of meetings, but I just want to note, that is a challenge I'm seeing, it's just having the meetings every other week, just fort of makes

it a little bit hard to figure out where we left off and pick up with the previous discussions. Sometimes that sort of leads to a lack of continuity a little bit. I otherwise think the pace if is not excluded, I just wanted to throw that out there as some feedback for you.

DENNIS CHANG:

Thank you, yeah, I was thinking about calling another meeting last week, for example, but I think you of all people know what's happening all around us, and it seems like EPDP Phase 2 team is being very aggressive in terms of meetings and attention for your time. So we're trying to be supportive of the community members who are involved in the other activities, as well. But we can look at that again.

What I want to advocate is I know that ICANN seems to work around meetings, our culture is meeting heavy, but I'm trying to change that for us, that we shouldn't need a meeting to get things done, and a meeting is important and we will get what's needed for meeting, but wanted to share with you that we are keeping careful track of the IRT meeting attendance, it's not bad, but if you look at people who attended all meetings, we are getting lower and lower in terms of attendance, only 6% have that continuity, even every other week. Just something for you to think about. Jody, go ahead.

JODY KOLKER:

This Jody. So, I guess my question still stands a little bit here. I think we're kind of covering that third party providers need to have a DPA, I'm kind of reading that into the paragraph that's in there. I'm kind of curious on what anyone else thinks, does it need to specifically say that

you need a third party provider as maybe an example of them, need to enter into a DPA agreement with ICANN? Maybe I'm being a little too, I don't know, pedantic about this.

DENNIS CHANG: Just to that everyone knows, third party provider will have DPA, that is unavoidable, just by the way the GDPR works. So be assured, that no matter what this policy language says, it's required by GDPR.

JODY KOLKER: Then I think we can probably just resolve my question there. Thanks.

DENNIS CHANG: Okay, thank you Jody, resolved. Marc?

MARC ANDERSON: Yes, it's Marc. On this one, Recommendation #22 deals specifically with dispute resolution providers. So that's specifically called out separately in Recommendation #22, which is otherwise very similar to the Recommendation #19 in what it's saying. But I think the third parties referred to is meant to cover things like escrow providers, and really any other third party that might be processing the nonpublic registration data in the main registration ecosystem. So I don't know if that helps answer your question, Jody, but that's what we were trying to cover in our recommendation, at least.

DENNIS CHANG: I just put up Rec #22 recommendation analysis here for your viewing, so we're skipping to #22 because Marc brought it up, and he is absolutely right, that's how we read it and that's what we're proposing. For example, Rec #22 by itself, we do not feel that any additional policy language is needed and Rec #19 is meant to cover whatever Rec #22 recommendation was addressing. And you can see that Rec #22 recommendation is specifically referring to this resolution provider here, which is a third party. While we're looking at Rec #22, is there any comment on Rec #22? Marc?

MARC ANDERSON: Thanks, Dennis, Marc again. Looking at Sarah's comment and my comment, the dispute resolution provider isn't subject to consensus policy. So in this case the recommendation is really for ICANN Org. I guess my comment really covers what I was just about to say.

DENNIS CHANG: Yeah, we agree with you, so we may want to jump around, the next one, Rec #23 is URS and URDP, where this comes up, the same concept. And let's review this. We're saying that it's up to ICANN Org to do the job with our dispute resolution provider. For example, with the URS, we don't even have a contract, we work under an MOU, but it's up to us to coordinate with them and to make sure that our rules that we agree on to work under is compliant to the GDPR and whatever else we need to do in addition. So, that's why we went ahead in providing you with the redline document for your information only, and it's not something that you really have to review, but it's really there for you to know that

ICANN Org is implementing the recommendation. Any comments on this? To address public comments like Betty is asking how will the supplier judge the veracity of the complainant? That is something that they are doing today and they have their own ways, and ICANN Org does not involving itself in that process. So, the document redline is in the folder of the IRT and we are going to work with the service provider to get that update made prior to the policy effective date, to make sure that we're all in line. That's Rec #23.

Now for Rec #22 we talked about, Rec #19 we were in the middle of talking so let's go back to Rec #19 and there are some comments here.

[AUDIO BREAK]

So, we are going to leave this and resolve this comment, if okay. Isabelle? May I? Thank you. Now the next comments here, I don't disagree. So David comments and Sarah agrees. Now let me think about this one, I don't think it's an issue, but thank you for your suggestion, David is not here, right? Sarah, did you want to talk about this?

SARAH WYLD:

Yeah, thank you. I think my comment in the Google doc is sort of the same thing that I'm unsure about now in the Zoom chat, and Luke, I think I agree with your point, but I'm just not sure that it's written clearly enough, and I'm not also sure how to fix that. I feel like the way it's written suggests that there needs to be a contract among all of these parties together, and actually what we're trying to say is that some of the parties, but all of them eventually, need to have contracts

between them. I don't even know how to articulate it properly. So it just doesn't seem clear enough to me. Thank you.

DENNIS CHANG: Marc, go ahead.

MARC ANDERSON: Thanks Dennis, this is Marc. I think that's a good point, I agree with Sarah and David's comment. I think the start of Recommendation #19 talks about contracted parties and then it goes on, the example, the language that follows is really specific to the party agreement, ICANN and the registrars and ICANN and the registries, and doesn't take into account third parties. So I think that's a good point.

DENNIS CHANG: Okay, thank you. Let me think about this and how we might address this. So we'll take an action to see if we can make that more clear.

SARAH WYLD: I have a question, I wonder if the way to proceed here could be to look back at the recommendations and see very specifically who was recommended to enter into agreements. Because what I see is that Rec #19, and it's hard to scroll because there is a really big recommendation in the middle there, but #19 is between ICANN and the contracted parties, and then #20 is a separate thing, and #21, but then #22 is specific to dispute resolution providers. So maybe we don't need to get into any question about third parties and instead we just focus on DPAs

between ICANN and contracted parties and between ICANN and dispute resolution providers. And those are the two things that we were required to solve here, maybe. Thank you.

DENNIS CHANG: Diane?

DIANE PLAUT: I think that's exactly what the intent was, because if you look back, we are defining what contracted parties are. So in fact, that in and of itself solves this issue, and we just have the recommendation with regard to dispute resolution entities. So, I think just the definition alone should solve this problem, and then any kind of third party language that we have in here could then be taken out to avoid any confusion.

DENNIS CHANG: Thanks Diane, anyone else? So what we're trying to do is make the policy language simple by having one language that dealt with DPAs but am I hearing suggestions that maybe we need to create different language like for example, like this? For the DPAs? Amr, did you want to speak?

AMR ELSADR: That makes sense, this is Amr. Just to ask a question, if the language here is specific to ICANN and contracted parties, I'm wondering also, part of the recommendation involves as part of those, I believe it's referring here to the actual DPAs between ICANN and the contracted

parties, but these need to include indemnification clauses concerning the risks involved with any other parties involved in data processing. I always assumed that meant third parties, as well, but I'm not sure how to factor that into the language that we're trying to develop here. I'm not sure if this makes any sense or not, but I figured I would ask the question and see what folks have to say. Thanks.

DENNIS CHANG: Marc, go ahead.

MARC ANDERSON: Thanks Dennis, it's Marc. I'm trying to gather my thoughts here on this one. Really, any party that's touching the data, any of the entities in the ecosystem where the data is being transferred, under GDPR there has to be a proper data protection agreement in place in order to facilitate that transfer. So I think we all know and recognize that from our understanding of the GDPR, in the recommendations, though, we're kind of all over the place. Sarah pointed out, Rec #19 deals specifically with ICANN and the contracted parties, which is one of the main contractual relationships in place.

Rec #22 deals with the URS UDRP providers, but then speckled throughout the recommendations to deal with other entities, for example Rec #8, touches on escrow providers, so Rec #8, the first part says ICANN Org enters into legally compliant data protection agreements with data escrow providers. So it's kind of all over the place. So, I guess we know that we have to have these data protection agreements in place but then our job is to figure out how to implement

the policy, which applies really to ICANN registries and registrars. And so consensus policy doesn't apply to UDRP, URS, and escrow providers directly, but more is related to ICANN, who in those cases is the entity with the contract.

So, I think we need to account for that, I think every place there is a processing activity between different parties, there needs to be DPA in place, we need to make sure it's accounted for in the policy, but we want to make sure we're not conflating contracts between registries and registrars and escrow providers. So hopefully, I don't know, I feel like I was rambling a little bit there, so I apologize, but I think it's a little bit of a complicated relationship we need to account for in the policy.

DENNIS CHANG:

Amr?

AMR ELSADR:

Yeah, this is Amr again. Thanks, Marc, that wasn't rambling, I thought it was very helpful and makes perfect sense to me. So, instead of pointing out that third parties need to enter in these agreements, because that's not exactly what the recommendation says, like you point out, the recommendation only instructs ICANN and contracted parties to enter in these agreements with each other. But would it make sense to mention that these indemnification clauses need to be included in those contracts, the ones between ICANN and the contracted parties? And then just leave the contracted parties to work out their own agreement with whatever third party service providers they use, but that doesn't

necessarily need to be spelled out in this language here. Would that make more sense? Thanks.

DENNIS CHANG:

I think Amr is asking a question, would that make more sense? What we were trying to do is to address, yes, Recommendation #19 clearly says contracted parties here, so we started with contracted parties only language and then we saw these recommendations coming our way and we thought by adding the word "third party" here, it would cover these other recommendations that address the certificate resolution provider and everyone else that we may not even had thought about or addressed. So exactly what Marc has suggested, whoever is processing the data will have to comply, and that was sort of the idea behind this language.

So maybe it goes beyond Recommendation #19 exactly, but it does carry the intent of having the DPA applied to other parties that are involved, that's beyond the contracted parties, also. So that was the idea. We're trying to make the policy language simpler that way. Otherwise, we would have to mention something else somewhere else, and we didn't know how we would do that. We're open to suggestions, and Amr has asked a question, does anybody else want to talk about it? Amr, you want to talk about it, go ahead.

AMR ELSADR:

Thanks Dennis, this is Amr again. To clarify, also, the recommendation doesn't require third parties to enter into any contracts with ICANN or the contracted parties, nor do I see how ICANN could force compliance

onto those third parties, if they don't enter into these agreements. So that's kind of why I see where Marc is coming from, I think he's got a good point.

So I'm just wondering if we just limit the language we're working here to what is required in the recommendation, the data protection agreements between ICANN and these contracted parties should include that indemnification clause that is referred to in the recommendation. I think it's the last sentence of the recommendation, and just leave it up to contracted parties to work this out with whichever third party provider they choose to work with. I'm guessing that might be the least messy solution here. Thanks.

DENNIS CHANG:

On that note, maybe we do want to conclude today. Think about it. We do need to cover and address all the recommendations which clearly has to be reflected somewhere in terms of implementation and this was our intention here, to add no other language and cover it all in Rec #19, but we'll have to think about it a little more carefully. So, Rec #23, there may be new contractual requirements that we may have to get into to implement the GDPR, that I don't think is ruled out, if we have to, we have to. I think that is the intent of the policy, and we were trying to leave it open that way.

Let's see, we've got five minutes. We went through a lot today, actually much more than we had intended. So we actually went to #23. But before I leave, let's briefly touch on Rec #28. Remember our favorite Rec #28, those of you who were with me at the Pre-IRT? We went

through it, and this is the first one that we worked on, because we had to create the interim policy, and that was done.

And I just want to briefly touch on this Rec #28, because I have received some interesting comments from Liz, Sarah, Roger, Eric, Jody, on basically the date of February 29th and we hear you, and I just wanted to make sure that we are all, the whole implementation is on the same page, that I know that different people are asking, me and you probably, I have not come out with any kind of timeline for us, and I'm still holding to our principle that until we finish our analysis and define all of our tasks, we don't know. That's my message.

Any comments on this before we leave you? Do you have any other thoughts? Basically I wanted to let you know that I don't disagree with anything you're saying and feel free to continue to comment. Rec #28 is basically saying do the implementation, and we're doing it as quickly as we can, and we will see what happens on the deadline and the timeline. Diane.

DIANE PLAUT:

I'm sorry, Dennis, I raised my hand too late, I just wanted to say that I had some suggestions on the last recommendation we were discussing to try to resolve that issue. But I could certainly, due to time, just send it to you offline. And it's just again that perhaps we could take the due consideration language, put it in front of indemnification clause, being able to show that the intent was that to ensure risk for data processing with third parties, that appropriate clauses are included, and then simply change the third party provider information to the same

definition of contracted parties. But I'm happy to go in and suggest those changes because I know the call is about to end.

DENNIS CHANG:

Thank you, yeah, please do, go ahead and address it via email to the IRT, I think that's probably a good way for us to think about it. So, I'm going to conclude the meeting, it's at our end. So I will say goodbye and I will see you online. Thank you, everyone. Andrea, you may stop the recording.

ANDREA GLANDON:

Thank you, this concludes today's conference. Please remember to disconnect all lines, and have a wonderful rest of your day.

[END OF TRANSCRIPTION]