ANDREA GLANDON: Good morning, good afternoon, good evening. Welcome to the registration data policy implementation IRT call being held on Wednesday the 16th of October 2019 at 17:00 UTC.

In the interest of time, there'll be no roll call. Attendance will be taken via the Zoom room. If you're only on the audio bridge, could you please let yourselves be known now?

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: Thank you, Andrea. Welcome, everyone, to our IRT meeting number 11. Let's get started. Here's the agenda for today. We have ICANN 66 IRT session confirmed, so I'll just show you when and where IRT work assignments review well do, and then we'll talk about [28] and the policy effective date and the timeline. Rec 18, disclosure, and then we'll end with our technical contact and consent discussion.

Our team member roster here, IPT, no change, but IRT, we have one addition to the IRT joining today, is Laureen Kapin, PSWG member, co-chair and GAC. Laureen, are you on and could you introduce yourself briefly?

LAUREEN KAPIN: I am on the line. I'm Laureen Kapin, and happy to be onboard. I am from the United States Federal Trade Commission focusing on consumer protection and privacy. I'm also co-chair of the Public Safety Working Group.

DENNIS CHANG: Welcome, Laureen. There is a long list of IRT assignments which you'll see, I will show you, and here it is. There is a 55 task list up to date so far, and it'll take you a while, probably, to get up to speed, but we welcome you to join, and please don't hesitate to stop us at any time to ask questions or add your comments. I see a hand. Roger, could you please speak up? Do you want to say something about the agenda?

ROGER CARNEY: Welcome, Laureen. I'm wondering if we should change the agenda talking points on number five and six, and maybe flip those. I just think five will take us a lot longer to discuss, probably carry over, and I think we can cover six relatively quickly. So it's just a suggestion. Thanks.

DENNIS CHANG: Thanks for the suggestion. I think I understand your point. The reason that we have it this way is because I know that some of the IRT members have told me that they have to leave earlier today, and they really are interested in talking Rec 18. So let's stay with this and see if we can get through it. For number six, we'll make sure that we leave enough time to talk about that, because that is also important, but Rec

18 is a high-interest topic for all of us and I saw a lot of good comments come through, and we do want to spend good time on it.

So let me cover the ICANN 66 logistics. Montréal IRT sessions are confirmed, we're going to have two sessions, and this is the way you'll see it come out in the ICANN events calendar. It's IRT 1 of 2 and 2 of 2. The first one is on November 6, 8:30 to 10:15, The second one, November 7th, 8:30 to 10:15 again, but note the difference in the room. They're switching us to a different room. So please note that. And if not, Andrea can send out the meeting invitation just like she does with all of our IRT meetings, so it should end up in your calendar with the correct information anyway. So look for that invitation and accept.

Next, let's talk about the rainbow chart. We haven't seen this in a while, but I'm sure you remember. The change in this box here – and this is what we're going to talk about – policy effective date TBD. We have changed this to TBD.

Why did we do that is because of our discussion on Rec 28. Let's look at Rec 28. As you recall, Rec 28 was the first recommendation language we worked with, and using the Rec 28, we convened a pre-IRT, and then we published the interim policy which is what we call stage one, right? So we are in this blue area right now, but it was the Rec 28 recommendation that allowed us to do that.

Rec 28 also had a date which was that 29th of February 2020 is the recommended policy effective date. So we talked about this at length, and we took notes in our previous meeting, gathered all the notes, and

Rubens, our IRT liaison, has sent this e-mail to the GNSO council on October 2nd immediately after our IRT meeting. Is Rubens on?

ANDREA GLANDON: He's an apology today, Dennis.

DENNIS CHANG: Okay. That's fine. I'm grateful to Rubens for acting so promptly after the IRT meeting request has gone to him, and I'm sure you've all seen it – maybe Laureen hasn't – but basically said that IRT is letting the GNSO council know that the 29 February date is not feasible, and we have done these things so far, but there's a lot more things to do and rather than rushing to meet a date that IRT is allowed to do a wholesome job and come up with its own timeline for the policy effective date.

So that's what was sent, and I don't know whether there was any reaction from the GNSO council, but I can tell you that this is sort of the same message that we sent to the ICANN Org, so I think we're all consistent. I think we're all in agreement that it's the right thing to do to go ahead and do the analysis [fully] and recommendations, turning it into implementation plan, [build that] implementation fully, and then try to come up with a timeline that is based on an estimate.

Let me see. There's [inaudible]. Marc, you have your hand up. I'll give you the floor. You want to have a comment?

MARK SVANCAREK: Yes, please. I think we can all do math so we know this is the right letter to send. I'm just wondering, if the council does not – they're meeting this week, as Beth says. If they don't discuss it or if they reject this conclusion, what happens then? Thank you.

DENNIS CHANG: Process-wise, nothing, really. February 29 2020 is still days off, and then there'd be discussions. It's the IRT who's providing status to the GNSO council, and ICANN Org can also provide status to the board who asked us to let them know how this group is going. So we're consistent in our message.

In terms of process, we carry on, and if we're forced to do something on the 29th of February 2020 and if we're directed to do something, then we will have to reconvene and figure out what that is. But the way we have been conducting and planning, we are trying to implement the entire policy.

This is a good opportunity to bring up this subject that Marc Anderson has proposed last time. We talked about it a little bit, and he discussed a possibility of separating part of this policy and do a policy only for publication and see if we can get something done like that. This is something that we're still discussing here.

Now, after some discussion, what it does is it actually complicates a lot of things that we have to do, because we still need the baseline and platform for many of the things that this publication-only policy will require. The way that we've looked at it, it seems like it makes actually the job harder and the scope increased in trying to separate a

publication-only policy from this policy. And of course, that plan will also have to go back to the board and then GNSO for approval if we are going to do something like that too.

Has the IRT given this some thought? Let me hear back from you. Does it make sense to try and separate a publication only or any part of this policy as a separate policy to do it quicker? Beth, go ahead.

BETH BACON: Hi, Dennis. Hi, everybody. I just wanted to – not necessarily for expediency, but certainly for flexibility perhaps, it might make sense – then again, if we're going to do that, we should see the draft of how it looks before we say "Yeah, this looks great." But just like Marc Anderson suggested in his edits with regards to publication, some of that could make sense in an operational sort of document. So just because those things may change as technology changes and we don't want to necessarily have to revise a consensus policy for the PDP to make operational changes. So I think it's certainly something we could and should consider.

DENNIS CHANG: Okay. Anyone else? Go ahead, Marc Anderson.

MARC ANDERSON: Thanks. We have 29 recommendations to work with, and that's obviously a lot to have to figure out how to implement. So I think it's certainly worth considering if breaking up the 29 recommendations into chunks makes more sense and helps our work.

I'll be honest, it's not something I've given a whole lot of thought. There may be some logical groupings that could be done to gain efficiency. It may be though that there are dependencies between the different requirements and splitting it up actually creates more work.

So I think it's worth considering. It's an intriguing thought. But I think we should be careful not to create more work for ourselves in the process. So just my two cents on it.

DENNIS CHANG: Thanks, Marc. Next is Beth again.

BETH BACON: I think I'm just going to change my full name to "It's Beth again," because I talk too much on these calls. So I think that I agree with Marc. Yes, I think something to consider. So maybe one of our goals for Montréal could be – because I think we do need to focus on getting the draft of the consensus policy together so we can have a draft to digest pre-Montréal and then discuss during our two days.

But also, maybe we can, while we move up to that – and I hate to ask ICANN staff, because you guys are great, for one more thing, but as Marc says, creating more work without understanding what it's going to result in ... Maybe staff could go through and just simply flag or list the items that – just little checkmarks or just a list of the things that we think could get pulled out and what makes sense.

So then we are going through the whole effort of drafting an entire separate policy or an operational procedure or anything like that, but

we would be able to get at least a picture of what we're considering. And I do think that we'll have to shop that around with our operation folks too, so we should keep that timeline consideration in mind. Thanks.

DENNIS CHANG: Thanks, Beth. Yeah, my goal here is to make sure that overall, we carry this implementation project in the most efficient manner possible and keep the scope intact. So I'm very careful about doing things that actually complicate it even more. But yeah, I have to tell you, I have been looking at it. It's an intriguing thought. I love the creativity and suggestion. So I keep thinking, and I will do that and I ask you to think about that too, give it some thought, because as you think about it, yeah, the dependency is so interrelated, it is pretty complicated.

I'll leave it there, to tell you that we will consider it. I want to give Matthew the floor.

MATTHEW CROSSMAN: I don't want to say too much more about this because I definitely agree with the points that Beth and Marc raised. I think I just want to emphasize that when we're going through that exercise of just deciding what might be able to be pulled up, I think we really do need to be really rigorous in how we think about dependencies and think as broadly as possible, because I really like this idea, and I think it could potentially save us a lot of time, but I think the flipside of it is I don't want us to get into a situation where we are sort of boxed out and we've created some additional complexity for ourselves down the road

because something that we included in the first release of policy is actually impacted by something in this second grouping that we're working on.

So definitely support this idea, really like the proposal, but really want us to be very careful when we think about those dependencies so that we don't cause problems for ourselves down the road. Thanks.

DENNIS CHANG: Yeah. Thank you. I don't mind telling you that the staff have committed to provide you with a first draft, I guess, a first impression of something for you to review for Rec 27, the policy impacted, and we call it the [wave one] only. From our perspective, this policy does have a lot of impact on a lot of other things. So I think you'll probably have a better appreciation for how extensive it is when you see that first draft. We'll have that to you on the week of the 28th is what we are working to right now.

So yeah, we're fully aware, and we'll proceed cautiously and try to make sure that we're not spending more time talking about hypothetical dependencies rather than the real dependencies that we have to deal with.

Next item, is there anyone else? Matthew again. Do you want to speak again, Matthew? Go ahead.

MATTHEW CROSSMAN: Sorry, old hand. Let me take that down.

DENNIS CHANG: Sarah, you have your hand up. I'm sorry, Susan.

SUSAN KAWAGUCHI: Thanks. I do have a question though on – I understand that we can't estimate a new date, but it would be good to understand what the group is thinking about how much more time we do need. I've been on vacation and had conflicts I've been in, so I haven't been on in several weeks, so I missed the discussion on this. But are we talking three months, six months? Do people think it's going to take another year? It would just be good to have an idea of what you're talking about here.

DENNIS CHANG: Jody?

JODY KOLKER: Thanks. If there are changes that are going to have to be made to the technical specs – to Beth's comment in the chat – that's going to be a year or 18 months, and that would be very fast if a technical spec is going to be changed.

In order to get a technical spec through IETF – we've been working on a fee document for I believe seven years now. So any changes, a year or 18 months would be considered a race, basically, in the IETF if there are technical docs or specifications that need to be changed.

So I think we need to keep that in mind when we're talking about this.

DENNIS CHANG: Thank you. Yeah, that's a good perspective from the implementer's point of view. And I think the Rec 27 document that we're working on, we'll try to create some of the expectation there too.

There are changes that can be made after this policy is effected, but there are changes that must be made for this policy to be effective, so those are all careful considerations. Does anyone have a comment or feedback on the timeline? Beth again.

BETH BACON: See, it is my full name. Susan, I think it's a really reasonable question, and I know that Rubens requested six months, but I think, also keep in mind that was also to consider maintaining the six months implementation for the registrars that is really important, and the registries. So I would say kind of chop off six months from, when we actually want to do it.

I think we're making great progress, so don't think we need to measure this in a year at all, unless of course, as Jody said, we want to do a tech spec and we kill ourselves. But I think even if we wanted to do that, there's a chance we could do it separately and save some time and still get the consensus policy finished. Maybe I'm being overly hopeful.

DENNIS CHANG: Thank you, Beth. Just so that we're clear, as you have seen the note here that we as a team have not suggested any date, and that six months Beth is referring to is of course the implementation time

between the policy announcement and policy effective date. So she's talking about let's make sure that minimum six months can be maintained – has to be maintained, but as others point out, it could be actually more than six months.

So there's two dates that people confuse this with, and that's very important to remember. First date is the policy announcement and legal notice date, and that's when we have our policy complete and everyone knows what we have to do.

The second date is the policy effective date. That's when all of our implementation work has to be completed. So those are the two boxes that you see here, and in between that time is what we call the rainbow bridge where the contracted parties have the option to implement all or some of the policy as they transition to stage three, which is after all the policy effective date.

Okay, I think that's enough for Rec 28. Then you will note that I have called for a closure to the Rec 28 analysis too because I believe as of now the analysis of the Rec 28 is done and we know what to do here and we're proceeding with building our implementation.

So as we move to the next item, okay, we are going to then talk about the Rec 18. Let's get into it. Here's Rec 18. Laureen, you're watching how I get to the documents, and that's the way I do it. It's convenient for me to just go back to the task list and click on the links, then all of the tasks and the docs are linked to the task list.

So this is Rec 18, and let's get into it. I have accepted some of the comments that I think some of you have made when it was a straight-

forward sort of editorial change correcting punctuation or replacing a word here and there for more clarity. So if you are the commenter, you should have received an e-mail that I have accepted your comment.

So I'm trying to get it as clean as possible as we proceed here. In 9, this is the reasonable request for lawful disclosure of nonpublic registration data [is the] title that we will use. And 9.1, have no comment. 9.2, no comment. 9.3(a) is when we start to have comment. 9.3(a)(iii), "Reasonable request for lawful disclosure must provide ..." This is a "must provide," so this is a list of things that we're saying that when someone is making a request, you have to provide these things.

So 9.3.1, no comments. 9.3.2, let's talk about this here. First comment is from Sarah. Is Sarah here? Jody, do you want to talk about this? Go ahead.

JODY KOLKER: I'll let Sarah go first since she had the comment.

DENNIS CHANG: Go ahead, Sarah.

SARAH WYLD: Thank you. Hi. So what I'm trying to suggest in this comment is simply that not all registrars always require the requestor's location in this type of request. I think we need to provide some flexibility in a situation where that may not be required. But sometimes it might be necessary,

so that's what I'm trying to get to with this suggested change, is that the location is only required if the registrar needs it. Thank you.

DENNIS CHANG: Jody, go ahead.

JODY KOLKER: Thanks. I agree with that. I was reading through the comments today and I saw that you put jurisdiction in there, but if we could, I was wondering if anybody would have a problem with including the requestor's location and/or jurisdiction if the registrar requires this information. I think it would be good to have both the location and the jurisdiction for some registrars. Other registrars might not find that helpful at all.

DENNIS CHANG: Comments? Beth?

BETH BACON: Thanks. I'm not saying no to this. I think it might be helpful, but I'm wondering if it goes outside of what the recommendation includes. That's my only question. I don't think it's bad, I think it's helpful. But I am conscious of staying within the recommendation language.

DENNIS CHANG: Marc, go ahead.

MARC ANDERSON: Thanks, Dennis. I agree with what Beth just said. I think we're starting to get away, deviate from the language that's in recommendation 18. The language in recommendation 18, page 59 if you're following along, tries to establish the minimum information required. If the entity working on disclosure needs additional elements, it doesn't prevent that. So I think the disclosing entity can put additional requirements in there. This is trying to establish a minimum floor, this is the minimum information required for reasonable requests for lawful disclosure.

And there, I think we should try to stick as close as possible to the language in recommendation 18. So a longwinded way of saying I agree with Beth.

DENNIS CHANG: Brian, go ahead.

BRIAN KING: Thanks, Dennis. Looking at this, I don't think jurisdiction is contact information. I agree with what Marc said. If this is the floor, you need to be able to contact the requestor, then you just need the contact information and you wouldn't even need the location, really, or the jurisdiction. If what we're getting at here is contact information, that's probably clear enough. Thanks.

DENNIS CHANG: Beth has the floor again.

BETH BACON: Mostly, you guys said what I wanted to say, but I think also, if we just make clear it's the minimum, it's well within the party that's receiving the request, well within their requirements and rights to just respond and say that we need more information. So the minimum contact. I think we should stay as close to the recommendation as possible. Thanks, guys.

DENNIS CHANG: Roger.

ROGER CARNEY: Thanks, Dennis. Thanks, Brian, for your comment, but I think the problem is this language doesn't say minimum. Everybody says minimum, but this language says "must." So if I was a requestor, I could say that I don't have to provide that even if it was requested, because this is the only thing saying I have to provide.

So I think that we would have to add "minimum" in here somewhere so that we know that additional information could be. Thanks.

DENNIS CHANG: Who's next? Beth?

BETH BACON: I think Jody was first. Jody's hand is up.

JODY KOLKER: Go ahead, Beth.

BETH BACON: Thanks. So Roger, I see your point, and it's a good one, but frankly, if someone said to me, "This is all I'm required to provide," I can then point them to my terms and requirements as a registry and say, "Well, this is my data subject request policy, and this is my disclosure policy, so you need to not only meet what is in this consensus policy but also my terms and conditions," which they agree to if they register a domain name. So I'm not as concerned about it, but if it's a concern for you, then let's make that note, I think.

DENNIS CHANG: Jody, go ahead.

JODY KOLKER: Thanks. So Beth, you said, "This is my terms and policies if you register a domain name with me," but the people that are requesting this information haven't registered a domain name with us or with you most likely. So they're requesting this information, they don't have any – are we allowed to have terms ourselves as registrars to say whether you get this information? I thought that's what this is supposed to lay out.

I'm not trying to be combative here, I'm just trying to clarify what I don't understand, because if registrars are able to say "This is what we need," then I want to be able to say, "No, you did not provide me your

jurisdiction so I can't give you that information." But I don't want them to go to ICANN and then say "They didn't give it to me" and then be forced to give it to them without the jurisdiction. Is that possible, or not? I'm not sure. Thank you.

BETH BACON: I don't want to jump the queue, but just to respond, I think, yeah, you're absolutely right. I was thinking of data subject requests. But with regard to a lawful disclosure request and they send this minimum, then yeah, I think that could happen, and it depends on how ICANN Compliance wants to read compliance of this. So again, I think let's figure out what we want it to say, make sure it stays in line with the recommendation language. But maybe we need to make a note that we are concerned about how Compliance is going to read that.

DENNIS CHANG: Marc?

MARC ANDERSON: Thanks. It sounds like we're heading towards a similar landing point here. The intent of the recommendation is to establish a minimum baseline for reasonable requests, but if the disclosing entity requires additional data in their jurisdiction beyond that minimum, I don't see anything in the policy recommendations that would prevent that. So I think 9.3 should be updated to reflect that this is the minimum information required and make it clear that disclosing entities may

require additional information depending on their jurisdiction, business practices or terms of use, etc.

DENNIS CHANG: Mark SV?

MARK SVANCAREK: Hi. I agree that we all must conform to the local law of either party. I am concerned though that we are trying to create a policy and now we're just leaving the door open to "Plus I can require anything else" and it'll be inconsistent between data controllers and everyone can make their own terms of use if it's a constraint. So we could ask, "Okay, also provide your bank statement." So you could make up anything, and I don't think that that is a good basis for creating policy, and I'm pretty concerned about it. It seems like this is very open ended if we don't choose the right language here.

DENNIS CHANG: Brian?

BRIAN KING: Thanks, Dennis. As a constructive suggestion here, I'm looking at the language in the final report which requires registrars and registry operators to publish a publicly accessible section of their website the mechanism and process for submitting these kinds of requests, and it dawned on me that perhaps we just kind of repurpose some of that language, an somewhere in that 9.whatever, I lost it because it's not on

the screen anymore, somewhere in there we say that the request must contain, at a minimum, the registrar- or contracted party-specific mechanism and process as published on the contracted party's website. Something along those lines I think might capture the concept and then be clear about if that contracted party does have specific needs, then those are addressed in that section. Thanks.

DENNIS CHANG: Susan.

SUSAN KAWAGUCHI: I'm concerned about leaving this open ended too just because we've all seen so many policies that were not clear, and then when we try to abide with them, there's definitely differences of opinion of interpretation.

I think if we keep looking back to the language in Rec 18, it states this is minimum, that these are the things that the EPDP team agreed upon that had to be in the request.

Now, if the requestor decides to add a bunch of information, jurisdiction, location, whatever the information might be, that's fine, but I agree with Marc that we would not want to open this policy up to having registrars interpret this to mean a lot of criteria required that would be too high of a bar to provide for a requestor.

I don't see the registrars on this call doing that. I think everybody's here and willing to make this work, but we all know the registrars that don't adhere to ICANN policies now because of the confusion and

interpretation of them which cause all kinds of security concerns on the Internet. So I think we need to be very clear here.

DENNIS CHANG: Marc Anderson.

MARC ANDERSON: Thanks, Dennis. I certainly understand Susan and Mark SV's point there. There should be a reasonable and related to the request what the requirements are. Mark's example of a bank statement, Social Security, you could certainly put unreasonable ... There's certainly the possibility there to put unreasonable bar in there for your requests. So I certainly appreciate and understand their concerns. I think there's probably a way to thread that particular needle.

I remember though the intent of Rec 18 – right now, we're living under the language in the temporary specification on disclosure, which is very loose language, and so the disclosing entities, one of the big complaints is that disclosing entities today take very different approaches to how those disclosure requests are processed and handled.

And the intent of Rec 18 was to improve on that and not necessarily right all the wrongs in the world, especially knowing that in phase two, we would be focused on the SSAD model. But the phase one working group team felt that they could improve upon the status quo that existed in temporary specification, and that's what we're trying to do here in Rec 18.

So I just thought it would be worth reminding everybody that we've got the temporary specification language that we're all operating under today, and the intent of Rec 18 is to improve upon that, provide more consistency, more commonalities across how these requests are handled, both for the requestors as well as the disclosing entities.

DENNIS CHANG: Beth.

BETH BACON: I think Matt was first.

MATTHEW CROSSMAN: Hey. I was just going to propose in looking through this – I'm wondering if we just make kind of a direct linkage between 9.2, which gives registrars and registries this obligation to publish what their mechanism and process is for these reasonable requests with 9.3.7 which is already sort of a catchall for any other additional information required.

So 9.3.7 could read something like any other information required by applicable law or by the registry or registrar published mechanisms and process for submitting reasonable requests for lawful disclosure. That way, this isn't as open ended as it could be. It is cabined by what is already allowed within the policy in 9.2, but still sort of gets at this idea of this is the minimum and that there may be other things that are required. [Can't] require anything, but you are able to publish this mechanism and process for submitting requests. So just a thought there. Thanks.

DENNIS CHANG: Beth, you want to go next?

BETH BACON: Sure. I think maybe I'll make a suggestion that maybe we put a note here that says – why don't we go in and redraft this maybe in a couple of different ways, in the suggestion Matthew had with linking it, and then also, we can do one that captures this not as the minimum, because we don't want [based off] Roger and Jody's concerns which hi think are valid.

The recommendation is fairly simplistic in that it says these are the basic requirements, and this is what you will send in. 9.2 notes that we will have our policies posted. And really, we want to remember that Rec 18 is a requirement for registries and registrars to process and respond to a request. It doesn't necessarily mean [inaudible] disclose, it doesn't necessarily mean that because you give us these four things, then we're going to say, "Absolutely, that fulfills GDPR." We may have to go back and say, "Hey, may we ask you a clarifying question?"

So I think that we should keep that in mind. If this was to provide a really nice baseline of this is basically the information we need as a discloser to get us started, and to both process and respond. So I think that if we can say, "Note that this is the basic information required," and then link it to 9.2, we might all be happy. So maybe we just take some homework to draft that out.

DENNIS CHANG: Any other comment on this? Looks like, yeah, we do have to go back and look at this, all the comments made and look at it from different perspectives. So that is 9.3.2, and we'll leave it to come back for now. Let's see, what else? Sarah had another comment here.

No, this is Roger's comment. Okay, refers to another section. And then here, Sarah, replace some language, legal rights. Okay, thanks for that comment. Any other comment on that section? Reasonable requests must include, as a minimum, such baseline, but while we do that, we need to make it clear that it's not open ended, like Mark SV was mentioning.

Okay. So let's move on to the next comment. Next comment I see here is urgent reasonable request. This is a pretty strong reaction by Theo. I'll start the conversation – or Laureen has her hand up. Go ahead.

LAUREEN KAPIN: I'm sorry to perhaps jump ahead, but regrettably, I have a hard stop because of another conference call. But I did want to be able to speak to this briefly because I had seen the flurry of comments suggesting eliminating this provision, and frankly, that generated a lot of concern among the Public Safety Working Group and other law enforcement colleagues.

This is a pivotal requirement to be able to deal with urgent requests, which by their nature and how it's defined here are very narrow. I am not aware that there have been floods of requests falling under this category that have created problems, and this 24-hour timeline is in itself a timeline that, though I know some view as not reasonable, it

actually is a lot of time considering the life threatening or other severe consequences at issue.

The other point I did want to make before I regret that I have to jump off the call is that this is consistent with other ICANN frameworks, both in the registrar contract requirements which require a 24-hour abuse contact monitoring, and also the registry security agreement framework also has requirements for a 24-hour turnaround time for urgent requests. So this is not unprecedented, but it is a crucial mechanism for these requests that fall on this very narrow category. So I wanted to make sure that I had an opportunity to say that. I've also shared it in writing in the comment section.

The other question that I have for you, Dennis, at some point, is what happens when there's a failure to reach agreement on certain issues among the implementation team? And you don't have to address that now, it's just that at some point, I would be interested in knowing the answer to that.

DENNIS CHANG: Sure. We can talk about that if we do reach that point. For now, I would like – I'm sorry you have to go, but thank you for that comment, and it's well noted. Does Theo want to speak? Thanks. Go ahead, Theo.

THEO GEURTS: Thanks, Dennis. I understand the arguments from [inaudible] and I would actually counter that with the fact that we don't get any – we don't get much requests at all, let alone emergency requests. And the

situation has always been there when we had a privacy proxy service being up there and there was never an urgency requirement there.

And I think in all honesty, if there is a real emergency, it will get read by the registrar, and it will be dealt with by those registrars who are actually taking the job serious. But this is just me speaking in my own capacity. I do not represent the entire Registrar Stakeholder Group or all the registrars in the world.

But I think in all seriousness, most of us track a whole lot of stuff that is urgent or which we think is urgent, and we usually act on it when it's urgent. But my main problem is, what is urgent? Ben Butler made a fantastic comment yesterday on the abuse webinar when he said, if everything is an emergency, nothing is an emergency. That is actually my problem with making that distinction. Thanks.

DENNIS CHANG: Beth next.

BETH BACON: Thank you. I assume Laureen has dropped off so she's not going to have the benefit of our chitchat back and forth, so hopefully we can sum this up in some of our comments. But for the urgent requests, in 9.5.3.1 – I'm just looking at the language here, and pardon me if I'm missing a trick, but in recommendation 18, it does say that a separate timeline for urgent reasonable disclosure requests should be supplied. But I don't see that we define urgent, and I think that also, it's really important to say – so yes, that's there in E, but if you go to 9.5.3.1, there's also urgent

requests are limited to circumstances that pose an imminent – I'm not sure where we got that from. I don't see it in Rec 18 unless I'm just blanking out and can't remember where it is.

So I think we should discuss how we get to describing urgent or just saying, yes, urgent, timelines do exist and we will respond. And I do think it's really important to note, for everybody on this call, and Laureen, when she joins again next time, I don't think any registry or registrar is saying that we won't do this. We absolutely do this. We do this on a regular basis and we do it with law enforcement all the time, especially with regards to like CSAM or law enforcement requests for threat to life and that sort of thing. And it does exist in other – in I believe the RAA – I'm going to have to check the RA as well.

So I think that it's not us saying we don't wan tot do this. It's in the recommendations. It's going to be in here, but I think it's how we translate the recommendation into consensus policy language to see if we are doing it true to the recommendation or if we're doing it to kind of pad it out. And it may just be duplicative of requirements we already have. So that's my thing.

We're 100% going to respond to these requests. There are times that registries and registrars alert law enforcement to these issues and say, "Hey, would you like us to do something about this? This is happening." And they say, "Oh, yeah. Great. Thanks." So I think that that's important to note, and we will figure out a way to characterize this, because it is in there, it is in the recommendation, but I think not in this detail. Thanks.

DENNIS CHANG: Thanks, Beth. The words here come from the security framework where actually you and I worked together on a few years ago with Theo, didn't we?

BETH BACON: Yeah. But that's not in the recommendation.

DENNIS CHANG: No, it's not in the recommendation. Yeah, that's true. The words that we put in the implementation and policy language, not all words are from the recommendation. We have to provide additional words for clarity for implementation. So the questions obviously is being asked, what is an urgent request, right?

So instead of saying nothing, we should say something. I think that's the responsible thing to do for implementers, no?

BETH BACON: I see your point there. Can I make this request? Can we highlight this as language that – so I think that 9.5.3.2 is certainly in the – it's lifted basically from the recommendations. I know Sarah says let's get rid of it all, but I think that that 9.5.3.2 is certainly in there, and I think it needs to be captured.

So that may be all that 9.5.3 consists of, but maybe if we can think of a different way to characterize urgent, because again, we just say urgent in that recommendation and it's not defined in that detail, and I'm nervous about doing that simply because if we list it, we may, A, leave

something out, or maybe we add something that's completely bananas for some reason that this group doesn't know.

So I say let's please highlight that and we can come back to it. This is a fairly important one, and it gets into a lot of the discussions we're having on DNS abuse and all that sort of fun stuff. But I do want to note that – am I the only one that remembers talking about recommendation 18 in the EPDP and saying leaving this to implementation was going to be a nightmare? Welcome to the nightmare.

DENNIS CHANG: Thank you. We're all in it together, and I enjoy your company, of course. So you do remember, when you were writing the recommendation language, you wrote this to say criteria will be required during implementation, and this was the work that you have left for the implementation team. So that's what we're trying to do. We have to do this. It's not like we have a choice now.

And instead of coming up with brand new language, I would say let's leverage the language that we all worked together for a long time. Do you agree? Roger, go ahead.

ROGER CARNEY: Thanks, Dennis. I'm just going to repeat basically what everybody has said and what's in chat, I guess, is I'm not sure that this is necessary, because if we already have a path in our contracts, then we don't need to create a policy that at some point is going to end up contradicting what's in our contracts or policy.

So there's no reason to duplicate what is already required, so I'm not sure that we need this in here. Thanks. And just one other point to that is, recognize also that there's a whole other group of dedicated people that are working on disclosure in the phase two, so whatever we come up with is going to be overwritten or updated by them shortly anyway. But if it's in our contracts, let's not duplicate it. Thank you.

DENNIS CHANG: Beth, do you want to speak again?

BETH BACON: Always. So I think that I appreciate and treasure the time we spent together on the security framework language, and I think it's a fantastic piece of work, but lifting it directly from there and putting it in a consensus policy is a concern for me. So I think, let's think about it. I do think it absolutely has to have in there that there are urgent requests and we will respond in 24 hours, because that's in the recommendation.

So I think we all agree that that actually has to be there, maybe, but I say let's noodle on the other part.

DENNIS CHANG: Let's noodle. Susan next.

SUSAN KAWAGUCHI: I agree with Beth that this has to be there, and I'm a little bit concerned about Roger's comment that, well, it's already in the contract, because

we've already looked at other issues where the contract's going to have to be changed. So what we don't want to lose in the implementation is that, oh, this is superseding elements of the contract and we lose the urgent requirement to respond.

So whether we just take the RAA language and go "We can all live with this, we've all agreed to this in the past," and reference that in the document – implementation document or not, that's one solution, or the security framework language, but I don't think we can just say, "Oh, we can leave this out because it's in the contract," because the contract's going to change. These requirements will change responsibilities mandated in the RAA. So I just want to be very careful about that.

DENNIS CHANG: Thank you, Susan. Marc Anderson.

MARC ANDERSON: Thanks, Dennis. I think Susan makes some good points. [I find myself not into it.] She was saying – I think we certainly want to avoid a situation where we're coming up with recommendations that contradict existing contractual obligations, especially if there's procedures and processes that currently exist in the contracts and are in effect today. We should be looking to those and try to be consistent with those. So I think that's a point well made.

I have a request for you, Dennis. I think you mentioned – you pulled in language from the security – I forget what exactly it was, a security

framework discussion group. And I guess my request is, where you're pulling in language that was developed elsewhere? Can you include a reference or cite where that language came from?

I think it would be important to cite other work. I think Beth raised a good point there. Where language developed outside of the consensus policy is being lifted and placed into a consensus policy, that raises red flags. So I think it would just be prudent keeping in mind sort of open and transparent be a good procedure to just cite sources when language is taken from other places.

DENNIS CHANG: Yes. Will do. I made a note to myself here, I'll provide a link. It's the security framework that's on the website, and I'll find it and put the link there for you.

Yeah, this was – in the beginning, when I first looked at it, saying, "Oh my gosh, implementation team has to come up with definition? How are we going to do that?" And then I remembered, "Oh, we did this before together with registries, registrars, and PSWG, and worked on it together and come to an agreement to use this definition." So it was very timely and very useful. So unless the implementation team here wants to tackle that issue again, my proposal is to use the same language.

So that is 24 hours and the criteria, that's 9.3. So number one, Theo, I don't think we can just delete it because recommendation, it's very clear that we have to include this as a requirement, and there's no way out of it unless we are going to not follow the recommendation. So

that's the first point. Second point is we need to determine some criteria for us to work with when we implement.

Let's proceed to the next section here. 9.5.4. Sarah says it's too specific, this part of the sentence should be removed. Let's see. Why is it too specific? Laureen's made comments here, "We should keep this language." And Sarah responded.

Okay, so we have a conversation going on. Unfortunately, Laureen is not here. Anybody else have a comment on this? We'll take it now, we'll listen. Go ahead, Sarah.

SARAH WYLD: Thank you. I just wanted to say I reviewed and understand Laureen's comment, but I still think that we should remove that question. It is just too specific. It's not part of the recommendation. I don't think it's necessary in order to achieve the goal of that part of the recommendation.

If the response has to include a rationale that is sufficient for the requestor to understand the reasoning, then that's what it should say, and we don't need the highlighted phrase in order to accomplish it. Thank you.

DENNIS CHANG: Understood. Thank you. Brian, go ahead.

BRIAN KING: Thanks, Dennis. Yeah, we agree we Laureen's point there, and as a reminder, we came to agree on this in the phase one because right now we're just getting ignored, and the responses that we're getting are not showing any kind of thought or analysis. I don't mean to make that a blanket comment because some registrars are being reasonable and we acknowledge that, so apologies.

But largely, we are being ignored and our requests right now to being analyzed. And it's clear. So the concept here was that we agree to consider this as a kind of voluntary thing or at the are a's discretion while we work on SSAD, but if the requests are going to be denied, this is how we ensure that they've actually been reviewed and analyzed. Thanks.

DENNIS CHANG: Thanks, Brian. Beth.

BETH BACON: Thanks for this. So again, I can see your point, Brian, and Laureen, but I'm just wondering where – this level of specificity is not in the recommendation, to my knowledge, unless again I'm just blanking out and not reading this correctly, because I have 63 screens going at this moment.

I don't think it's unreasonable to want that as a person who's getting a request, but it does say process and respond. So if we want this level of detail, then I think we have to figure out where in the recommendation that lives before we include it.

I will say that for PIR, we do respond, and we say there's some level of "Thank you for your inquiry but you didn't meet our requirements" or something like that.

I think registrars are doing that as well. But I think maybe also Brian, if you could let us know exactly what you would like in response, that would be helpful just in a general sense because that's actually intriguing me as a little nerd who has to do privacy stuff all day. So if you want to let us know, that would be great. But for this specific 9.5.4, I'm just not sure where that language came from in the rec. So [inaudible] would be helpful.

DENNIS CHANG: Did you want to speak again? Let's see, that was to Mark SV. Is that your question?

MARK SVANCAREK: I think it's Marc Anderson.

DENNIS CHANG: Marc Anderson, go ahead.

MARC ANDERSON: Thanks. I was just going to note that I dropped into chat the exact language from the recommendation. It's on page 60 if you have it in front of you. What I put in chat there is the language in the recommendation. And like I've said in other similar areas, I think where

possible, we should stick as closely to the language in the recommendation as we can.

The language in that section seems to have deviated a little bit from what's on page 60, so maybe we could take a look at what's on page 60 again and bring it back to being in line with that. Beth, go ahead.

BETH BACON: Sorry, old hand.

DENNIS CHANG: As a matter of principle, I agree with Marc that wherever possible, we want to use the language that the recommendations have, and also, it's the implementation team's duty to add languages as part of the policy for clarification, if it's helpful, of course. Not deviating from the intentions of the recommendation.

So a lot of the recommendation comes across as it's our job to craft some policy language to fulfill the implementation, and that's why what we were trying to do is propose to you these draft languages. And we're collecting your comments to revise them as needed to make it better.

Brian has a comment. Go ahead, Brian.

BRIAN KING: Thanks, Dennis. I think you summarized mainly what my point was. We're not trying to get any kind of improvement over the language that's in the final report, nor do I think anybody thinks that's what we're

trying to do. But to the extent that that language as drafted on your other tab there is helpful, then we'd like that, but we certainly shouldn't water it down any either. Thanks.

DENNIS CHANG: Thank you, Brian. Let's see. We were talking about – the next item is this language here, "Must not deny a reasonable request" language. What is reasonable? Yeah, that's a big, long conversation. But I think we got this language from the recommendation that – and I want to hear from you on 9.5.4.1 if there's someone who wants to speak to this.

Again, when we are using the recommendation language, we can't really explain that language because we're not here to justify or rationalize the recommendation we received. We're trying to implement them.

Let's move to 9.5.4.2. "Must explain how the balancing test was applied." This was a recommendation language, again. Is there a comment here? I don't think we can just simply remove it.

Sarah, go ahead.

SARAH WYLD: Thank you. If I may, it just really seems to me like these two sections, 9.5.4.1 and 2 are redundant and they don't add anything that we don't already have in other sections.

DENNIS CHANG: You think it's redundant? Okay. Any other comments? Susan?

SUSAN KAWAGUCHI: I'm just reading Luc's comment about this would require divulging personal information, and I just don't understand that. I've been involved with submitting requests to registrars, and you're asserting trademarks, you're calling out infringement. So if they though that was overreaching for example, a registrar thought it was overreaching, how would that involve personal data in the response or the rationale?

DENNIS CHANG: Is Luc on?

LUC SEUFER: Susan, you're focused on IP rights, but there are other requests we are receiving which are not related and not [that] clear, and for which if we have to explain how we operated the balancing test, there is no way around divulging some personal data from then. So we would be denying the disclosure but doing it also to explain how we operated the balancing test.

DENNIS CHANG: Mark SV.

MARK SVANCAREK: Thanks. I have some clarifying questions. I'm wondering – I understand the argument about 9.5.4.1 being redundant. I don't understand the

feeling that 9.5.4.2 is redundant. If we could clarify what that's redundant to, that would help me.

And to Luc, could you give us an example of such a request where you would be forced to divulge personal information? I guess conceptually, I understand what you're trying to say, but I'm trying to think of an actual example where that would be required, and they all seem like edge cases.

So certainly, there could be some cases where you say "I cannot tell you any more because I'd be forced to divulge personal information," but I think in the majority of cases, that would not be true. so perhaps you should explain your concern in some more detail or with an example, or something like that. I would appreciate that. Thank you.

DENNIS CHANG: I give the floor to Luc. Go ahead, Luc.

LUC SEUFER: Like you said, if it 's a clear-cut case, the request won't be denied, so the data will be disclosed. But for cases where for example we are the registrar and hosting provider for a blogger who is highly vocal about the politics in his country and we receive a request from a lawyer from his country and we did not disclose the details we have, and if we would have to explain why, we would have to detail to the requestor, we would have to disclose details. I don't know if I'm really clear here.

MARK SVANCAREK: Dennis, may I come back?

DENNIS CHANG: Please do.

MARK SVANCAREK: Okay. I think in the general case, it'll be pretty clear to say why you denied it. In the case of a trademark, you would say, “I don’t think that that trademark applies to this name.” That’d be pretty straightforward, and nothing would be disclosed in that case.

I think that in the other case, you would state some canned language out of the regulation explaining why this didn't pass a 6.1(f) balancing test, because of – I don’t have this memorized, but “your legitimate interest does not outweigh the specific rights to this person.” And you could provide some additional detail around that, but in the end, it would not be divulging any personal data. Thanks.

DENNIS CHANG: Marc Anderson.

MARC ANDERSON: Thanks, Dennis. Going back to 9.5.4, the questions on 9.5.4.1 and 9.5.4.2, I think if the language in 9.5.4 is updated to reflect what's in the policy recommendation 18 on page 60, then the need for 5.4.1 and 5.4.2 goes away. So I think that was in response to an earlier question about where’s the duplication there.

I think it becomes duplicative if we just revert to language in the policy, so my suggestion is to replace all of 9.5.4, including its subsections, with the language from the policy on page 60.

DENNIS CHANG: Noted. Thank you. Beth, you have a comment?

BETH BACON: I think we've kind of beat this one as much as we can. I agree with Marc, I think that it's best to stick with the languages in the policy for this particular one, so maybe we take this out, replace it with the language that's in the policy, and then if we want to discuss that further if you still feel that's not enough, then we can discuss it further.

I would note that 9.5.4.2 – it's just saying that you need to follow the law, and if you're making a request under GDPR, that response may or may not require you to – it may or may not require the response to have the balancing test – if it's legitimate interest, obviously, yes, but it may or may not require an explanation or a response.

But under this, [we're already by] a consensus policy requiring the registry and registrar to respond. So I think that [we're] already kind of hooking Compliance into this quite enough. It's the law, we'll follow it. I don't think it needs to be restated here.

DENNIS CHANG: Yeah, we're just following, as you say, Beth, the recommendation language that mentions that balancing test has to be done. So I think we

cannot ignore the recommendation. Are there any other comments? I do want to give Mark SV some remaining time to discuss what he brought up in terms of tech contact data, so if we can pause here and we can – it looks like we have to come back to this anyway – and maybe focus our attention to the tech data, and I will yield to Mark the remaining time, which isn't much. Sorry, Mark. But I think I do want to talk about it at this call so that we can think about it until our next call.

So I'll yield to Mark here to talk about the tech data, and he wrote an extensive e-mail, and then there was more comments. I think I started a recommendation six and I just called it "consent" to see if I can draw some comments from the rest of the folks here. Go ahead, Mark.

MARK SVANCAREK: Thank you very much, Dennis. I know we don't have a lot of time, so I think I'll try to boil this down into four points.

The first point is mentioned in the question that Luc had. Luc was concerned that we now had two legal opinions, and I just wanted to clarify that the [Hensley] opinion does not contradict the Bird & Bird opinion. It simply clarifies some aspects of it.

And if you're wondering, if you look at the Bird & Bird opinion of 22 January 2019, notice to tech contacts, at the very end, they note that there are two bases that could be used for processing. 12(a) say if the registrars will rely on consent, do the following, and 12(b) says if the registrars will rely on legitimate interests, then do the following.

The focus of the Bird & Bird memo is somewhat different than the focus of the [Hinsley] memo, which his why perhaps that was not obvious. But actually, these are complementary opinions. Both of them allow for the lawful use of 6.1(f), legitimate interest. And also, there's some difference in the level of conservatism in the recommended safeguards. Different firms will give you different levels of safeguards based on how conservative an opinion you're looking for, so I think you could look at these two as sort of guard rails. As long as you're between those two, you're fine.

The second point is that contacting the technical contact will be allowed. There was certain concern that we could not actually lawfully ask the tactical contact any questions about their consent, because in doing so would constitute unlawful processing.

So the opinion really digs into that. It is already mentioned sort of obliquely in the Bird & Bird memo because it's mostly based on Article 14, but the [Hinsley] memo clarifies that, again, legitimate interest is applicable. So I recommend digging into [Hinsley] memo for that, and we can discuss it further on the list.

The third point is that since Article 14 does actually require you to let the data subject know that you have received their data from a different party, you do need to let them know within one month that you have done so. The [Hinsley] memo clarifies that that is your opportunity to ask for consent. So you could have asked them for their consent under 6.1(f), but since you're already contacting them under Article 14, it certainly makes great sense to ask them about, and then that's a great opportunity to clarify a bunch of other things, like do you understand

what it means for your personal data to be in the system? Would you like to change it? Would you like to remove your personal data either by declining to have it in there or by replacing it with nonpersonal data? Things like that.

The final point, Luc suggested, does the policy language need to be changed? And I think – here, I'm going to copy something – if we don't want to change it, we could survive, but I think it would make sense to add the following information that I've put in the chat into the policy language.

So you may do it if you have received the consent, or you may do it if you have performed an appropriate legitimate interest balancing test. And that's really the interesting point, I think, that needs to be made here, is that 6.1(f) does not say, "Oh, now I just do it." 6.1(f) says, "I have reason to think that this is the right thing to do."

The Bird & Bird memo of 22 January talks about some reasons why you might not think it is the appropriate thing to do, but that does not mean that in all cases, you will come to that same conclusion.

So there's a little bit of time. We have three minutes left if anybody wants to ask any questions, or we could postpone this to the list. I'll be quiet now. Let me know. I think Sarah's got her hand up.

DENNIS CHANG: Yeah. Sarah, go.

SARAH WYLD: Thank you. And thank you for going through all the different points, Mark. It was a really interesting memo to read. I personally did not agree with the conclusions that were reached, but it's always good to see different opinions. I think I'm not going to respond point by point, but I will just say ultimately if section 7.3.3 remains a "may," then I think it's acceptable. Some providers, some registrars and registries, might feel that they do have an appropriate lawful basis for this publication. I don't think that that is actually lawfully acceptable, but as long as it remains a "may," I can stay with it. Thank you.

MARK SVANCAREK: Yes, that is my conclusion as well. as I said, I think – so additional language, I don't have the language right now. I think the registrar may publish the technical contact data if they have received the consent of the technical contact. I would just append to it, "Or has performed an appropriate legitimate interest balancing test."

Since this is a "may," you can accept this legal reasoning or not. You could simply say "I'm not going to do it," so it doesn't matter whether it's lawful or not. I hope you will reconsider your thoughts about whether or not this opinion is valid.

Certainly, this is the sort of thinking that big companies like Microsoft are going to be using, and we feel pretty good about it. So, for what it's worth. Thanks.

DENNIS CHANG: Beth, go ahead.

BETH BACON: I'm just going to say, yes, let's argue over drinks in Montréal, Sarah. It's a plan. So add to the agenda for drinks discussion is that where the intersection of the legitimate balancing tests touches consent, that's a new one for me. So I think that is where I'm confused a little bit, Mark. So we'll add it to the agenda for cocktails.

DENNIS CHANG: [8:30 morning drink, 7 Up.] So let's talk about Montréal before we part here. I know we have scheduled the October 30th meeting, and that was scheduled a long time ago before we even thought about Montréal. But I know that a lot of us are traveling. So I'm going to cancel that meeting on October 30th, but let me know if anybody has a strong objection for canceling that meeting and continuing our discussion all the way to Montréal online.

Thank you, Roger. I see your chat. So then let's continue in Montréal and online, and we will conclude this meeting. Andrea, you may stop the recording, and goodbye, everyone. I'll see you online.

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]**