Recommendation #7 and #16 Automation – Discussion Items

'Cannot live with items'

Item #1:	Changes from 'should' to 'must' in relation to automation.
Current status in doc:	The staff support team came away from the discussions on the legal memo that for the use cases that were deemed legal permissible, these should be required to be automated from the start and as such updates were made.
Concerns expressed:	It is clear that this is not the understanding of a number of the groups (RrSG, RySG and NCSG) who are of the view that automation should remain opt-in for CPs. Some also noted that it is not appropriate to have MUST in sections that are considered implementation guidance.

Note, a similar point was made in relation to the mechanism – that it cannot mandate future automated disclosures ('must not couch on creating new policy obligations'). Some also pointed out that reference to the mechanism do not belong in the implementation section as it is not for the IRT to deal with but a recommendation for this EPDP to make.

Item #2:	Need to define what automation means
Current status in doc:	The recommendation refers to 'receipt, authentication and transmission of SSAD requests' as well as 'processing of data without human intervention' and automation of disclosure decisions. In all these instances it is the understanding that it concerns processing by machine, without human intervention.
Concerns expressed:	By RrSG, RySG and IPC, noting that there are different kinds of automation, some on the CP side and others on the Central Gateway Manager.

Item #3:	The old section c is confusing as written – it is in the implementation section but reads in part like a recommendation. Some of it doesn't seem to belong there.
Current status in doc:	This section was rewritten in part and in part left-over from the previous recommendations which may have caused the confusion.
Concerns expressed:	By RySG

Item #4:	Who determines financial feasibility of automation – footnote 1 ([1] Initial consideration of the financial feasibility of automation will be addressed by the ICANN org with the Implementation Review Team and subsequently by the mechanism for the evolution of SSAD, as applicable.) and is this still appropriate - there would be no SSAD if it were not commercially feasible.

Current status in doc:	This recommendation was included in the Initial Report and has not been modified since.
Concerns expressed:	By RySG - unsure that ICANN org or the mechanism for the evolution of the SSAD are in a position to determine what is commercially reasonable and GAC – is this still necessary?
Item #5:	Use cases referenced in recommendation should include requests where RDS data does not contain non-personal data, per the B&B advice
Current status in doc:	Two use cases are listed – the staff support team overlooked this use cases in its rewrite.
Concerns expressed:	IPC – this use cases is included in the B & B memo as not having legal / similarly significant effect.
Item #6:	'at least' should be added to the use cases added as this is a b beginning floor and not a final ceiling.
Current status in doc:	the sentence currently refers to 'the following types of disclosure requests'
Concerns expressed:	GAC
Item #7:	Removal of Requests from Law Enforcement in local or otherwise applicable jurisdictions
Current status in doc:	This use case, that was included in the Initial Report, was removed in response to the legal advice which indicated that such disclosure request are expected to have legal or a similarly significant effect and therefore requiring meaningful review.
Concerns expressed:	GAC

Minor issues for clarification:

a) How does the EPDP Team envision that disclosure works in cases were disclosure responses are automated (the CGM directs the CP to disclose the data)? The Staff Support Team had included the following: "the Central Gateway Manager would direct the Contracted Party to automatically disclose the requested data to the requestor. This could be done in the form of a command via RDAP or some other way that is to be determined during implementation" but several commenters expressed that they did not envision it would work this way.

b) There is a suggestion that there may be cases where the SSAD can provide some level of automation but the actual decision will be made by a human associated with the SSAD – this is currently not foreseen in the recommendations as either decisions for disclosure are made by CPs or the disclosure is automated. Should this possibility be included?

c) The Initial Report language included the possibility for a CP to automate all disclosure requests (note, this is not new language) and an addition was made to reflect that this could also include some type of Trusted Notifier scheme, at the choice of a CP, as

discussed during the review of public comments – some are concerned that a CP being able to automate all requests or all requests from certain requestors should not be allowed. Do note that the language aims to make clear that the CP takes responsibility for making such a decision after having 'weighted the risk and assessed the legal permissibility', although the RySG is of the view that this language should be removed as 'it is up to the CP to decide their own criteria on opting in to central gateway automation'.

d) Change 'meaningful human review' to 'review' as not all cases that are automated may require meaningful review.