
MONTREAL – GNSO Registration Data Policy IRT 2 of 2
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ANDREA GLANDON: Okay, Dennis, the recording is going. Welcome to the Registration Data Policy IRT Meeting, Day 2. You can begin.

DENNIS CHANG: Thank you, Andrea. Good morning, everyone. You're back. And you made it.

UNIDENTIFIED FEMALE: Here I am.

DENNIS CHANG: Isn't it wonderful?

UNIDENTIFIED MALE: It's great to be here. Thank you.

DENNIS CHANG: Yeah, oh, my gosh. I'm so thankful for your support and dedication to this policy implementation. This is probably the most challenging policy implementation that I've ever come across at ICANN. But also most interesting because of that. And there are so many people involved, it's amazing. Just like I think all of my team at the GDD, they

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all have a part in the implementation either trying to understand how it affects everything that they do and also trying to help us with producing the reviews, studies, and reports. And I'm sure it is that with you.

Please come up and sit with us if you would like. Jim, have a seat here.

JIM GALVIN: Thanks.

DENNIS CHANG: I'm going to ask you a question. You need a mic. Okay, so let's get started. Yesterday we looked at our analysis map, and I have some updates on that. But let's look at the agenda first.

What we are going to do is look at the One Doc. I'll introduce you to very briefly. And then we're going to get into substance discussion about 5, 7, and 8. And then Rec 18 disclosure we'll talk about. And Rec 28, the policy effective date and timeline.

So these are four topics we must cover today. So I propose maybe, let's see, four times 20. Can we do 20 minutes? Yeah? Does that fit? Okay, so let's allocate about 20 minutes for each topic and see how far we can get through. Question, go ahead.

SEBASTIEN DUCOS: Hi. You asked me yesterday to go to the Council with a few questions on recommendation 12, 23, 24, and 25. I'm reading without my glasses so if I got the numbers wrong, tell me.

Just very briefly, on 12 I don't know if you heard, but the intention was to push back and go back to the original wording for which they need to vote. And all this is a bit new to me, so correct me if I get it wrong. But if they vote and get a super majority, they're able to push back. At which point the Board would have to themselves have a super majority to get their way. And so they were checking that and would schedule the vote for probably in December. I think there is a meeting on 19 December. So that's on that.

And on the two others, there was a slight disconnect between Rubens and I. I thought that he was going to talk about and he heard, because you told me that I was going to talk about it. So my bad. So I presented to them very briefly verbally, but I will send them an actual proper letter to get a proper answer.

DENNIS CHANG: On 23 and 24?

SEBASTIEN DUCOS: On 23 and 24.

DENNIS CHANG: Okay.

SEBASTIEN DUCOS: So in principle, they were agreed. But because I hadn't put it on paper, I'm not going to [inaudible].

DENNIS CHANG: So if I may ask you to hold off on that. Because I do want to go and look at my notes again with my team.

SEBASTIEN DUCOS: Okay.

DENNIS CHANG: And if we come to the same conclusion that you do, then there would be no need to go to the Council.

SEBASTIEN DUCOS: Okay.

DENNIS CHANG: I just wonder if there are any IRT members who believe that we need to redline and those redlines for the URS and UDRP procedures are required and needed. If there's anyone who thinks that, I'd like to know. No? Okay. So I think let us do our homework, and I'll get back to you for 23 and 24. And it's not urgent, by the way. This is not urgent because we've already done the job. So to not do anything more about it is really easy. Go ahead, Marc.

MARC ANDERSON: Thanks, Dennis. I just wanted to clarify. Sebastien, you said on 12 the council was looking to push back on 12. Is that...?

SEBASTIEN DUCOS: That’s what I understood. And they wanted to vote and needed to have more than 60%, a super majority vote, in order to be able to do so. And Marika was going to check exactly what the requirements were to be able to push back. That’s what I understood. But if you were in the room and I got it wrong, please.

MARC ANDERSON: Thanks, Sebastien. I had a slightly different turn of phrase there. I would say I understood their intent that they were going to send the same language back but with additional clarifying language as suggested by the Board and that Marika had agreed to take the action item to draft that based on the language in 29. And so I believe the Board would be voting. They would need the super majority that you described, but they would need that for – actually there’s Marika – they would need that to vote on the language to send it to the Board.

DENNIS CHANG: The important thing for me the way I hear it is that we will have a clarity on direction to the implementation team in December. Is that the way I should understand that?

SEBASTIEN DUCOS: No, no, sorry. December is the next meeting that they have. I don’t know if they will be able to make that deadline. But the soonest would be December.

DENNIS CHANG: All right, the soonest will be December.

MARC ANDERSON: Yeah, I don't remember hearing a date.

DENNIS CHANG: A date is going to be important to us, but we will have to assume a date and the outcome of all of that for us to talk about our timeline which we will do as part of our agenda today as an important agenda item. We'll see what we can do. So that's number 12.

Just one thing I wanted to let you know. We renamed this map Task Determination Status Map if you notice on the title. Because I noticed confusion yesterday about what this really meant. It's like, have we determined what our task is for each one of these recommendations? The green means, yes, we have determined our task and we know what to do and we're going to do that.

Yellow means not quite. We know maybe some of the things that we need to do but not all the things that we need to do or there's actually a disagreement in doing what is proposed. Meaning do we add policy language or do we not add policy language? That is a decision that has yet to be made, and we may need to have further discussions. So that's what it means. Any questions on the colors now?

Okay, so I hope this helps. It helps me to know where we are with the "analysis" but it's really a task determination because if you look at our

implementation process, we have to make a task list. And until we do that, we really can't do our task estimate and time duration estimate. But we're going to try today.

Let's get on with our introduction of the One Doc. You've all seen it by now. It was sent out. We call it the One Doc so that you all know that this is basically a merging or culmination of all the individual policy language that we have been working on so far. It has been restructured, if you will, and I think that – and I have to thank Marc for the suggestion on his—Anderson—because we took a lot of your approach in combining things and it made a lot more sense. And that was very helpful. Thank you so much.

What you will notice is that we added something called introduction in the beginning. We began writing, but this is not so important for us right now. We can finish that later. Just so that you know, we felt that it would be helpful to add an introduction section because it I think avoids a lot of discussion on the scope section which was quite – it was a long scope section and we were able to condense it quite a bit. I think Beth would be very happy with this because I think you were very instrumental in making that comment.

The other part is, of course, policy effective date which we have to work on. The main body is made up of collection, transfer, publication. And then we follow that with reasonable request and communication log file. You will see that communication log file is made up of two recommendations combined. We thought that made sense to have all the log file requirements in one section. And then at the end retention.

And implementation notes, of course, as a separate section. And then we follow that with a background. These are a table of contents, so they're linked to each section, and you can click them and get to it.

So let's get to Section 5. Section 5 is Recommendation 5 we wanted to discuss. So, Section 5 and Section 6 which is from Recommendation 7. And then Section 7 which is from Recommendation 8. So these three sections are the ones that I believe you wanted to discuss. And then Recommendation 18 is in Section 9. So we'll talk about that as well.

Now let's start with collection. I don't think there was any – go ahead.

MATTHEW CROSSMAN:

I think I had flagged this because I had one outstanding issue about the Purpose 7 data elements. Unless there's something before that, I think it would be worth discussing that if I could.

We had talked about this a little bit, and I'm hoping this will be a little bit easier to sort out now that we're face-to-face. If you look at the EPDP final report in Recommendation 1 that lists out the purposes for collection, there's Purpose 7 that has to do with the types of data elements that would be collected to enable validation.

I had initially proposed some language in Recommendation 5 that said something along the lines of a registry operator may require collection of additional data elements as identified by the registry operator in its registration policy. I think we had some back and forth on this that there was a feeling that maybe that was more appropriate for inclusion just

in the implementation notes saying that nothing in this policy prohibits the collection of certain data elements.

So I just wanted to maybe clarify why I think it's important that language is actually in the body of the collection section. I think it's important for registries that do validation to have something in the actual text of the policy that they can point to that says if we're negotiating with a registrar to collect this kind of data, we can point to something in this policy that says you may collect this. It would be a "may" and not a "must." We're not creating an additional obligation. But having something to point to that says this sort of collection is allowed I think is important.

I also think it is different than the type of data elements that we would want to include in an implementation note like you suggested. Things that are clearly outside the scope of the policy like credit card numbers, for example. That's definitely not something that's part of the Phase 1 report. But nothing in this policy is going to prohibit registrars from collecting that info.

I think substantively that's at least why I feel it's important that it's in the body of the policy. But I think there's also a procedural reason why it's important that it's in the body of the policy, which is it's pretty clear if you read the Phase 1 report and some of the language around Recommendation 1 that those purposes – it specifically says these purposes should form the basis of the new gTLD registration policy.

So I think we as an IRT if we choose to treat the Purpose 7 data elements differently than we're treating the other data elements that are

included in Recommendation 1, I think we're actually maybe relitigating something that was decided already for us by the Phase 1 work.

Those are my thoughts. I'm happy to hear any other views. I do have proposed language for that piece, but happy to hear any other concerns about including that language in the body of the policy. Thanks.

DENNIS CHANG: Anyone?

MARC ANDERSON: Thanks, Dennis. I don't want to pile on too much. I can just plus one Matt. But I wanted to just add that in our Phase 1 deliberations, that was something we spent a lot of time on trying to take into account that registries have different business models and we need language that's flexible enough to take that into account. I think Matt's spot on in that. I think he's making a suggestion that really takes that into account and captures the intent of what we were trying to accomplish in the recommendation. So just sort of my long way of plus one-ing Matt on that.

DENNIS CHANG: Any other comments? No? Is there a particular place within the One Doc you would suggest adding that language? If you do, then you can let us know later too. Okay? I agree with the concept, and I think if you think

it's important that it should be in the body rather than implementation notes, that's okay. Okay, thank you.

So any other comments on the collection section? So 5.1 is the registrar must collect these; 5.2 is may collect and so on. I see Theo made a comment here. If a registrar offers DNSSEC, it does not automatically mean we collect that info. A registrant does not have to provide DNSSEC value nor does a registrant have to provide nameservers. Providing an option does not equal collection. Any comments on Theo's comment?

What I would like to ask all of you when you comment, this is fine, but make a suggestion so that we're clear how you. Is Theo – I don't know if Theo is on the phone, but are you suggesting that this be changed to "may"? Is that the suggestion? Okay, go ahead, Roger.

[ROGER]:

Thanks, Dennis. I guess I'd like to hear from Theo on this because it seems to read correctly to me that you just give them the option to provide the data and if they do, then you have to collect it. So I think it reads correctly. I just don't know how he's reading it, so I'd like to hear from him. So maybe, Dennis, you can reach out to him and just say, hey, can you provide some...? Thanks.

DENNIS CHANG:

Yes, I will. Thank you.

UNIDENTIFIED FEMALE: Dennis, this is [inaudible]. Theo is online and he said in the chat, yes, Dennis. Change to “may.”

DENNIS CHANG: Oh, that’s what he wants to do? Okay.

UNIDENTIFIED FEMALE: That doesn’t make sense to me because it already says you only have to collect it if the registrant is providing it. It is not mandating the registrant to provide it. So when I literally read Theo’s comment, although, clearly, I’m misunderstanding it because he’s saying something else, but when I literally read it that’s what it says. You can’t force us to force the registrant to provide it. And so I want to make sure that’s clear. Which I think is perfectly consistent by the language “if provided.” But no one’s compelling the registrant to provide it. So I would disagree with changing that “must” to “may.”

[ROGER]: Maybe if we add “if the registered name holder provides it.” Maybe this trip is the first part. Because it seems like, again, that’s how I read it. But it seems like if we add “if the registered name holder provides the data,” then we’re required to collect it. Does that make more sense, Theo?

UNIDENTIFIED FEMALE: Theo says yes.

DENNIS CHANG: Just a slight rewording. Hmm, it seems like it already says that, but okay. Let me consider that. Can you take a note? Thank you, Roger. Go ahead.

UNIDENTIFIED MALE: I think I want to explain what Theo is trying to get at. The reason he wants to have that “if the registrant provided it” is because registrars can provide DNSSEC without having the customer do anything. They just say they want DNSSEC, and then the registrar provides all the DNSSEC elements. And then there’s nothing for the registrant to provide.

The registrant also can say I would like to have my domain hosted on a one-page website, but they don’t provide any nameservers there but yet we set the nameservers. The registrars do, without the registrant having to do anything.

I think that’s what Theo is trying to get at, and that’s why he would like to have that added. Theo, chime in if I have got this wrong, but that’s the way I read it too. Thank you.

[ROGER]: Yeah, and I think the trip up is “provided.” It’s what’s provided. The registrar’s providing something. So I think we just have to be clear on what’s provided. So “if the registered name holder provides” I think solves that.

DENNIS CHANG: Thank you for that. It makes sense to me. Any other comment on this? Go ahead.

MARGIE MILAM: I don't like the word opportunity. The registrar must provide the opportunity. Are they providing a mechanism for the registered name holder to provide values for those data elements? To me, some other word, but the word opportunity doesn't seem concise enough for me.

SARAH WYLD: I'll come back to this when I have a chance to read through the whole document, but I do think we have other similar language in other sections. Just at a glance, we have 5.2, "if the registered name holder elects to provide, then the registrar must collect it." So it might be an opportunity to make our language more uniform throughout the document and try to align it. Thank you.

UNIDENTIFIED FEMALE: I think Sarah and I were along the same lines in our thought process. I think it was in Marrakech we spent a good solid 30 minutes trying to figure out if we could do field, supply, opportunity, perhaps, maybe. It was 15 different terms. So I think this is caught up in that. So perhaps we put on for our agenda as a global change is to determine the word that we're most comfortable with for providing the field or having the opportunity or giving the option to just as a task for us globally.

DENNIS CHANG: I think we got the opportunity from the recommendation language, didn't we? But in the implementation policy language, yes, we will go ahead and use the language that is most clear and easily understood by the implementers. That's what's important for us. So we'll take a note, and we'll consider the language.

Let's look at 5.6; 5.6 came from Rec 29.

SEBASTIEN DUCOS: Sorry. I don't know if my position is also to enter into the argument here but just from a registry point of view from what I understand what you said, Jody, should you provide, for example, the nameservers automatically do you suggest that then you don't store that data? No? Okay. So regardless of who provides it if the data exists, it needs to be stored and then passed on to the registry.

UNIDENTIFIED MALE: That's right. That's exactly right.

DENNIS CHANG: And in your role as an IRT member and a liaison, you're free to chime in and provide us with all your expertise. We expect that of you. So you have double duties. Thank you so much.

The Rec 29 is something that I sent out and assigned to you for review. And we haven't discussed it, so this is the first time you're seeing this. So you have more time to look at it, but I want you to know that Recommendation 29 is imbedded into the One Doc now. So you're free

to review it here. We'll go to Rec 29 which is linked for your convenience, and it's here too with all your recommendation language. And you have been making some comments.

Now the other thing that I wanted to – oh, I didn't tell you this, but I think it's pretty obvious. I think Sarah made the comment or made a request that we identify all the recommendations that did not result in policy language, so we've gathered them here. Was that you?

SARAH WYLD: That was not my idea, but it's great.

DENNIS CHANG: Okay, whoever. I forget. Thank you for the suggestion. So our team have done that. And these are, you can see, quite a few recommendations that did not result in policy language. It's nice to see it all on the list here. They are linked for your convenience again so you can go check them out. And if you disagree with any of the analysis, please bring them up.

Remember, our process is that what we're doing right now is building a policy implementation plan which will go to the public comment. So we have ample opportunity to revisit our analysis and the language. Go ahead, Margie.

MARGIE MILAM: I'm sorry. I haven't attended all the IRT meetings. What is the reason we wouldn't have policy for Recommendation 1 or implementation? That's

to me a pretty significant part of the final report. So I just would like to understand the logic behind that.

DENNIS CHANG: Anybody have comments?

UNIDENTIFIED FEMALE: Don't we have the analysis?

DENNIS CHANG: Yeah, we have an analysis document for every one and we've gone through it before. But here is the recommendation, and then our approach is this. We're going to use the ICANN purposes or that sort of language within the data processing terms document. That's where [we will] be, so there's no language in the consensus policy. That was the analysis and subject to your review.

MARGIE MILAM: And I think that approach wouldn't work because the data processing agreement is only between the contracted parties and ICANN, correct? And the purposes address other parties that benefit from the consensus policy. So I think at a minimum you'd have to have the recommendation addressed in some way outside of the data processing agreement.

BETH BACON:

So for Recommendation 1 and for the purposes, I do think that it does work if it's in the agreement because we are the ones that have to process the data based – these are the parties that are processing the data based upon the purposes that are outlined. So out of Recommendation 1, I mean, I'm happy to revisit it and dig through again. But I'd be interested in knowing which ones you would want in the policy. What would you like to see from 1 in the consensus policy?

And I think [do] remember the consensus policy also just binds the contracted parties. So it's not logical to me to put in things that bind other people because it doesn't or can't. Sorry, that was very disjointed. I'm very tired.

MARGIE MILAM:

Thank you, Beth. I think it's more providing notice to the parties that technically benefit from being able to submit or take advantage of the purpose, I guess. Because we have 18 that will be more of the submission part of it.

So I just think it's an incomplete proposal without spelling it out. Maybe there's not a lot more detail beyond what goes into the data processing agreements, but it just seems like a significant omission.

DENNIS CHANG:

So, Margie, here's what I propose. I know you haven't had a chance to look at the entire doc. So what I would recommend is that you read the whole document, the One Doc, from beginning to the end and see if there are languages that satisfy you already. There may be some

language there that you're looking for. It's just not driven from Recommendation 1. And if you don't find those languages that you're looking for, please make a suggestion of specific language in a specific section so we can review it.

So I have done what you would expect me to do. Since I now have heard that not everybody agrees on the analysis, I have turned Number 1 into yellow so we won't forget to come back to you to make sure. Okay, go ahead.

MATTHEW CROSSMAN:

Yeah, I think I would just add too that maybe part of it is just that we're maybe being too broad by saying there's no policy language that flows from Recommendation 1. I actually think almost all of the policy language flows from Recommendation 1. We just talked about the Purpose 7 data elements that are in Recommendation 1 and that that forms the basis for some of the language of the policy.

So I think maybe it's not that the purposes themselves are not spelled out, but in my view basically everything in this policy flows from what we've identified as the purposes and then the data elements that are related to those purposes.

DENNIS CHANG:

That's a good way to look at it. So the principle on building the implementation language for consensus policy that I heard here is we do not put in any superfluous words in this document. And we must be

able to trace every language, every word, every sentence back to a recommendation so that we know where it came from.

That’s why I hesitate to just write things in. But everything that we’re writing in, we’re trying to tag. And if the Recommendation 1 requires a specific language, we are trying to do that basically.

But you may be completely right. The whole thing, Recommendation 1, is – the whole document is Recommendation 1. That’s another way to look at it. That’s probably why it would be good for all of you to read the whole document and to see where you feel some recommendation has not been addressed.

This is the IRT’s job. IRT’s job is to make sure that implementation we have provided here is in line with the recommendation and also complete. That is, it is comprehensive. That we didn’t drop any recommendation. So thank you for that, and we’ll move on.

SUSAN KAWAGUCHI:

I’m not sure where this would go but as I’m reading this language it reminds me of a lot of other policies within ICANN. And I just finished up last year on the RDS, or last spring, on the RDS Review Team.

As we reviewed all the policies that were created since the last review team, there was a significant number that were pretty good policies but there was no teeth in them. There was absolutely nothing to say that ICANN Compliance must collect metrics, must analyze, must require, be part of the audit. None of that.

So when we went to say is this policy a good policy—because sometimes we don't get it right—and is it effective, did it do what we intended the policy to do, there was no way of figuring that out because they didn't know if anybody was – they were like, yeah, we know some registrars or registries, whichever the policy applied to, were doing things. But they didn't know on a whole whether or not.

So I think it's really critical that somewhere within for this whole policy for all the musts that we indicate that metrics should be collected, that they should be reviewed by Compliance to see if these policies are being adhered to. Otherwise, why are we doing the work if we can't make sure that the policy that we all agreed upon is actually in place and working as intended?

BETH BACON:

Thanks, Dennis. Thanks, Susan. I think that I can understand that frustration as we make policy in a big group and it applies to contracted parties and ICANN basically. But I will note that unless there are remedies or these kinds of provisions recommended in the report, I wouldn't be able to support creating them from whole cloth in the IRT simply because they weren't recommended.

I also want to note that in the RA and the RAA your registries and registrars are required to comply with the consensus policies. They become part of the contract. So you have those. It's just that they're not said in each consensus policy because they are appended to the contract, essentially. And you're required to do that, and Compliance

has full ability to audit or call out a registry or a registrar for not complying with really any part of a consensus policy.

And I think I saw Russ come in. Yeah. So if he wants to say that that's not how Compliance works – not that he's Jamie but they hang out more than I do – then I'm happy to hear that. But I'm very confident that registries and registrars feel bound by this with remedy because we are bound by our contracts that this becomes part of.

OWEN SMIGELSKI:

Beth, as a former Compliance person who spent seven years there enforcing consensus policies, I can tell you everything in those consensus policies is enforceable and Compliance enforces the living heck out of them. So you don't need to have a concern about that.

SUSAN KAWAGUCHI:

One of the RDS Review Team recommendations is that every single policy going forward is required to do certain steps. Likelihood of the Board approving that I have no idea. But especially this week with the RA Spec 11 was told by Compliance, no, all we can do is we can ask one question. We can't do much else. It was Spec 11(3)(b) which I was concerned with.

So I think there are instances where we've got great language, great intentions but no teeth. And I'm not talking about the registrars or the registries that come to ICANN. It's the ones that don't show up that I'm concerned about.

UNIDENTIFIED FEMALE: Thanks, Susan. I agree. It's a challenge in that there's a large percentage of registries and registrars that don't come to ICANN. But again, if they don't come here, they still have a contract. I understand the frustration.

I also don't disagree with the idea that we couldn't do better in having some standard things that we do. But unfortunately, just like we can't be redlining – or shouldn't be redlining – the transfer policies and the other related policies we can't adopt a recommendation that hasn't been yet accepted by the Board and implemented.

So I'm not dismissing it, but I'm just saying I don't know that we can do it now and here. But perhaps this is just a good thing for us to know and we work at a different ICANN meeting in a different venue perhaps with the stakeholder groups to talk more with you guys and Compliance about how we can make some changes just as a different tack. So I'm in no way dismissing your concern.

LORI SCHULMAN: Just building on this conversation, I agree with the concerns raised by both Susan and Beth. First of all, we can't rewrite policy. But second, there does need to be a way to make sure the policy is actually being complied with and enforced.

So I do think there may be a sort of ambit of fairer grounds for something that's within our purview to think about. Is there a way to include some implementation language about making sure there's visibility into whether these policies are being enforced?

So when I hear something like collect data, that to me doesn't seem to be rewriting policy. That seems to me to be, just as Beth recognized and Owen recognized, that's just part of what ICANN Compliance does. So by saying we know you publish monthly reports. Might you add a category that reflects compliance with this policy? That to me doesn't rewrite policy but does give some transparency and accountability to the community about what's happening with this policy. For example—and I'm just brainstorming here. I just think that this is a very important point about how we get visibility into whether policy is being enforced.

[BETH BACON]:

Thanks, Lori. I'm just going to ask and put a pin in this because we're not in a Compliance session. I'm happy to suggest we talk about this later at the next ICANN or have a session with all of us. I will say that I do think while I'm open to the brainstorm and certainly flexibility and creativity as I know Compliance is working really hard in ICANN to think about how they work and what they do and always improve and I appreciate that. So maybe this is something we talk to them about.

But we also have to be very careful about the way that Compliance's actions are scoped in the contract. You don't want to add additional obligations by giving them more power. And I say power; it's the worst word I could use. But more tools. Not tools. I can't even figure out what I want to say. We can't give Compliance a blank sheet to just say we're going to request extra reports or we're going to give extra reports. That would be a contractual change. And I'm going to get off my box now.

DENNIS CHANG: Thank you, everyone.

LORI SCHULMAN: Can I just [inaudible]?

DENNIS CHANG: Yeah, go ahead, [Lori].

LORI SCHULMAN: Sorry. I don't want to beat a dead horse but when I talked about reports I wasn't talking about a reporting obligation from the contracted parties. I was talking about an ICANN Compliance reporting obligation. Something as simple, perhaps, as adding more granularity in the subject matter of the complaint. So I just wanted to make sure I wasn't being unclear with what I meant by reports.

DENNIS CHANG: Thank you. Getting back to the job on hand for the IRT, let me remind you the important decision for you is, and this is where the IRT – I call it the IRT split. When IRT is not in agreement, it's usually on the word "must." It's either "must" or "may," right? There is where the split is mostly. Everything else is pretty easy, but that's where we must and we have to get clarity because must is obviously enforceable and that's where you really need to pay attention. What are the must elements?

That's why we use "MUST," "MAY," "MUST NOT" in this language and we capitalize those. So please pay attention to this. For example, here's

a must and it's driven by Recommendation 29 and it's 5.6. This is where you have to review carefully and you agree that it is a requirement that is obligation for the registrar it says right here and then it's enforceable. So that's where we need to focus. And if there's any musts that we're missing from the recommendations, that's where I ask you to read the entire policy language and point out to me where I have missed a recommendation and I did not put it in there.

Okay, I think collection is there. Can we move on to the transfer now? This is Recommendation 7. We have comments starting here. Registrar must transfer. We have laid out 14 data elements here. There are two different categories of must transfer registrar. We have 6.1 and 6.2. 6.2 is if collected or generated. 6.1 is there's no condition. You must. There's a difference, slight difference. 6.3 is a may. So you can see that requirement is particularly important for Section 6.1 and 6.2.

Let's see what Theo says here. Okay, thank you, Theo. Is Theo in agreement with this, or is he disagreeing?

SARAH WYLD: If I may?

DENNIS CHANG: Go ahead, Sarah.

SARAH WYLD: Theo and I both have very similar comments on this section. So I'll just speak to that and hopefully he can jump in if anything is inaccurate.

I just want to flag for the team that we did have some very specific language in the recommendation that indicates that these data elements are required provided that there is an appropriate lawful basis and a data processing agreement in place. So I don't see that reflected here in this policy, and it seems like language that should be included. Thank you.

DENNIS CHANG:

On that particular point, I think that we said that the lawfulness and – what was the other thing? Legal basis? We're going to treat that in sort of a global case, global manner because everything in this requirement must have legal basis, right?

SARAH WYLD:

If I could respond. Yes, everything here must have a legal basis. But these data elements specifically are indicated here as a must, as a required. But they might not be required if that specific registry operator does not have that legal basis and DPA.

DENNIS CHANG:

I understand what you mean. But let me get back to maybe a scope statement. I don't know. You probably haven't seen this.

SARAH WYLD:

I do acknowledge I have not had the opportunity to read the whole thing because we've been here.

DENNIS CHANG: Yes, I understand. We take your note and will consider it. I just wanted you to know that we have tried to be considerate on differentiating for the geo basis as well as [legal and natural]. And we are treating that in a scope area because it applies to everything that comes down from there. Go ahead.

SEBASTIEN DUCOS: Going back to three or four years ago before we really initiated the conversation on GDPR and all this, on the data collection being legal or not there was this Catch-22 that the two Dutch TLDs were caught in where in order to demonstrate that what they were doing was illegal they needed a regulator to say that it was illegal. Otherwise, ICANN Compliance and Legal wasn't accepting the fact that it wasn't.

They wanted the proof. They wanted the cop basically saying you're in infringement. And as soon as you have a cop telling you that you're in infringement, then immediately would fall down and trickle down all the penalties, including penalties for not curing within – there were penalties that were aggravated every week if you were in breach.

So if we have a language that is a global language on, yes, of course we need to comply with the law, we need to also make sure that language reflects that problem, the Catch-22 between the I can't be seen to be against the law or I can't be proven to be against the law because otherwise I'd pay the penalty for it.

DENNIS CHANG: Thank you.

MARC ANDERSON: Thanks, Dennis. I just want to piggyback on what Sarah said and maybe just restate what I said earlier on Recommendation 5 with collection. With the transfer of this data from the registrars to the registries, this is something we talked about a lot and recognized that different registries have different business models and different practices. For some registries they have the need and a legal basis for requiring that data to be transferred. But for other registries, they do not.

In the EPDP Phase 1 we failed to identify a legal basis that applies in all cases for that data to be transferred. So that's why we have this specific language that if the legal basis exists and the data processing agreements are in place, then that data may be transferred. But that's not a global requirement that the data must be transferred because that just simply is not a global purpose that applies to all registries.

So there we tried very hard to have language that took into account the different business practices and the different purposes that registries have. We have very different business models, and we need to account for that in the policy language. And that's what we were trying to accomplish with those recommendations.

[ROGER]: Thanks. I would agree with that. From an implementer standpoint, I think it makes sense to put it inside the language. If I'm looking to see what I need to transfer, I don't want to look at 12 different pages and

try to figure out what I need to transfer. It would be better if it states it in the section where it says transfers. I mean, to me it just seems easier to read that way. But it definitely needs to be in the document. It just seems like this would be the best place to put it.

Secondly, thanks, Samantha and Graeme.

DENNIS CHANG:

So the question for the IRT is that we take the note that the language about the legal basis should be added. But are you proposing that we add it to the section above here for all these data elements? Or are you like as Theo suggests somehow carve out these six data elements and only apply the language to those six? And do you agree that this is a must, must transfer, must transfer, and there's no disagreement there?

UNIDENTIFIED MALE:

Can you repeat that last question? I think you asked if we agree that it's a must transfer. And I think you just heard that we do not agree. But I'm not sure I heard the question right.

DENNIS CHANG:

Sorry. I asked two questions. Okay, let's start with the first one. Theo suggests that we add this language about legal basis in the requirement here. And he identified six data elements. He highlighted six data elements in this list. So are you thinking that we should actually have a separate category and spell out the requirement with legal basis identified for these six only? Or is it really all of the data elements? I

mean, are you saying that 6.1.1 does not need legal basis? Is that what you're thinking? Go ahead, Marc. Let's take that first.

MARC ANDERSON: Thanks, Dennis. That's an easy one. It applies to all the contact fields.

DENNIS CHANG: Thank you. Thank you for that answer. Now more importantly this must, right? 6.1 is a must right now, it must transfer. Do you agree, or am I hearing you saying that you disagree that this is a must and it has to be may? Go ahead, Margie.

MARGIE MILAM: I'm sorry. I'm not following you. I don't understand why the highlighted section, some of that wouldn't be a must. Some of it's not being redacted even, so shouldn't the data that – like registrant country as an example. That's not redacted. So there should be no – because we've made the decision that there's no, it's not personally identifiable information, so there's no reason that data would have a concern about a legal basis. So I think we need to be a little more specific here.

And second of all, we are talking about legal bases right now in Phase 2 and getting a lot of clarity on this. So I wouldn't necessarily assume that we don't have a legal basis for all registries. We might get to a place after we get the legal analysis from Bird & Bird that we're looking for that would clarify that.

DENNIS CHANG: Yeah, my assumption was that legal basis is there, and that's what the recommendations, the PDP, the policy development team, and the Board has said. Assume legal basis exists. So then we proceed with the implementation. But if that legal basis applies to certain selected data elements, that is harder to spell out in the implementation language. But if that's what we need to do, then we must. Go ahead, Beth.

[BETH]: Thanks very much. I'm just going to move on from the Phase 2 part of it simply because that's for Phase 2 and we're just trying to get this policy sorted. And I understand the relationship and there may be some changes and some edits, but I don't think that the argument here is that there is not a legitimate basis.

I think the acknowledgement is that there are different business models, and some of those business models just simply don't request or require that data to be transferred in order for those certain businesses to provide their service. Others do. And then there's the other data that isn't even under this policy which Matt was talking about earlier for verification or other things.

So this is just an acknowledgement that not every registry and registrar requires or asks for the same information to be transferred from a registrar. So I think that we actually could be much broader. I don't think we should parse this out dink, dink, dink, dink by data element. I also don't know that we necessarily need to say if there's a DPA that exists. I think we could nod to as is required by the policies and practices or the business model, whatever we want to say, of the

registry these may be transferred in line with those policies and as outlined in the data processing agreement as required.

DENNIS CHANG:

This is critically important, and we need everybody to really focus on this. So let's be clear and just let me know. Speak very clearly to me. Right now we have the requirement as must. Fourteen data elements must be transferred. Period. If you're saying you disagree, just tell me you disagree. And say 14 elements here you're suggesting the language to be changed to may transfer and that's what you're proposing, then say that.

[BETH]:

I sort of think I did because you got it.

DENNIS CHANG:

[inaudible]

[BETH]:

Okay, so I think that, just to respond, I'm happy to go in here and noodle around and do a proposed little bit of language. But I think that it will be may but there needs to be some also kind of chapeau text to explain why it's may and when. And I think that we're happy to try and noodle around and maybe draft that out, but I think it's not saying that the legitimate interests don't exist or that the purpose doesn't exist. It's saying sometimes it works for the business model and sometimes it

does not. So I was just trying to give that context to the discussion. Seb's hand is going to fall asleep because he's had it up so long.

SEBASTIEN DUCOS: Devil's advocate here for a second. If it's may, the registry decides if its own business model requires all that registrant information. Is that what I'm hearing? So, Devil's advocate, I decide that I'm a registry that doesn't need it. How is it different from then thin registry? And are we opening that other?

UNIDENTIFIED FEMALE: I don't think that's [our call to make here].

SEBASTIEN DUCOS: Exactly. I don't think it is at all, which means that come what may these fields are required.

UNIDENTIFIED FEMALE: Just in the interest of making sure I understand the scope of this, as I'm looking at the recommendation and as I'm reading Sarah and Theo's concerns, I thought the issue that was being raised is that our Recommendation 7 has a qualifier. And that qualifier is provided an appropriate legal basis exists and data processing agreement is in place. That is what I'm reading Sarah's comment to be.

And so I don't think this falls under changing must to may or even adding a whole bunch of language about business requirements. I think

the real ask is having this qualifier in the policy reflected in the implementation and just having that in the introductory language. That to me sounds like it would solve the problem. So I just offer that as a suggestion.

DIANE PLAUT:

I very much agree because we were given this recommendation. It is a requirement. We don't want to change the discretion and have it become an issue. And really what is being asked here is to make a qualifier and to provide a legal failsafe so that there's clarity within the policy so it's practically implementable and easily understood. That's always our goal.

So perhaps we want to just have an asterisk next to "must transfer" saying for purposes of clarity under proposing that or provided that there is the appropriate legal basis and the DPA in place and make it as simple as that. Because these are all elements which must be transferred according to what the recommendation stated.

UNIDENTIFIED MALE:

Thanks, Dennis. Just for reference I pulled up the recommendation, and it's super clear on what we intended. It's color-coded. We have green fields under transfer logic as required and yellow fields as transfer logic optional. If you look at the policy recommendation language, all the registrant fields and the technical fields are listed as yellow optional. So Dennis is pulling it up right now.

Let's be clear. This isn't the first time we've had this conversation in the IRT. This is a conversation we've had before. We all know what we're talking about with this. I look at this and I think optional means optional. And we have a draft language in front of us that says "must." I don't know how you can read optional in the recommendations and write "must" in the policy. They're two very different things with different meanings.

But I think you asked us to state if we agree or disagree with the must. I disagree with the must. And I disagree based on this transfer logic table that's clearly color-coded for us.

DENNIS CHANG: And you're saying, just like Beth, it should be "may" not "must," right?

UNIDENTIFIED FEMALE: If you remember, there's actually a definition of optional in the report. It's Footnote 7. And that says these are either optional for the registrar to offer or optional for the registered name holder to provide. In both cases, if the data is provided, it must be processed. So I'm not reading the yellow the same way that Marc is reading it. I think the cleanest thing is to do what [Laureen] suggested. Just track what the language says in the recommendation.

[ROGER]: Thanks. Maybe we're just tripping up on the capitalized "MUST." The recommendation says must with a qualifier. So maybe we change the

“Must” to a lowercase “must” with the qualifier text added with it. I’m not sure, Diane, that I like the asterisk because I want my implementers to know and not have to look for it. So I’d just put the language in it, but the capital “MUST” doesn’t seem appropriate.

DENNIS CHANG: So it’s a rule in the implementation language that we use the keyword to make sure the requirement is identified clearly. So we must use “MUST” in all caps to let everybody know, the implementer know that is a requirement. It’s not a narrative, for example.

[ROGER]: But what you’re hearing from us it’s not a requirement. It’s a lowercase “must” with the qualifier. The qualifier makes it a “may.”

DENNIS CHANG: Yes.

[ROGER]: So if the qualifier does not happen, it’s a “may.”

DENNIS CHANG: Yeah, I understand.

[ROGER]: So you cannot have a capital “MUST.” You can have a lowercase “must.” Thank you.

DENNIS CHANG: I understand. I think for clarity you’re proposing “may.” You’re more aligned with “may” as a requirement, not a “must.” That’s what I hear. Do you want to speak?

UNIDENTIFIED FEMALE: I was just going to follow up on Margie’s point to say that the differences over the word transfer too that we have to focus on the fact that if the information is provided, does the optional language mean that, in fact, it then must be transferred? So that’s a point that’s really important for us to clarify and make clear.

And I agree with you that perhaps we want it to be as clear and implementable as possible. But by using “must” in lowercase or all caps or whatever, is that really, I mean from a practical standpoint, is that difference going to be getting across what you’re indicating what you think is best?

[ROGER]: And again, I think you’re hearing that we believe it’s a “may,” so however you use that I guess is the point. Thanks.

DENNIS CHANG: So I hear you, and thank you for discussing it in a clear fashion. This is what I mean by IRT split. This is a classic case of where the Implementation Review Team is interpreting the recommendation language in a very different way. And this is why we have our meeting,

right? To see if we can come to a common understanding. Go ahead, [Laureen].

[LAUREEN]:

I'm hearing both sides, and I certainly take Marc's point. We have this great visual yellow and optional, and then we have this footnote which essentially gives us an if/then scenario. So I'm just wondering if there's a way to reconcile that because both things are in the policy. We don't want to rewrite the policy.

That said, when I hear if this happens, then this must happen, I'm hearing that if there are certain preconditions satisfied, you're in a must situation. So I wouldn't agree with changing it to may. That said, again there are these prerequisites and I think we do need to be clear that there are some prerequisites in place.

I think we can tackle that. I actually don't think we're disagreeing. It's a valid concern to say make sure these preconditions are in place because that's what the policy said. It's also a valid concern that I think it would be inconsistent with the policy to change must to may because it's not a true may. It's if X and Y are in place, then you have to do it. So I think we can figure out a way to make that more clear.

UNIDENTIFIED FEMALE:

Thanks, guys. I think this started with a request to do an audit of the DPA. I think some of us read it as already containing the flexibility that's desired. But if we want to make it more explicit, I don't have a – it's not going to keep me up at night.

So I'm just going to suggest instead of going in circles because we're not talking about any changes. We're just looking at the same thing and talking about the capitalization of certain letters which is going to make my brain explode. So perhaps we put a pin in this. Not for a long time, but let's draft it out and look at it. Otherwise, we're just talking about how big the letters are.

DENNIS CHANG:

Well, yes, I agree with you. Let's put a pin on it. I think it may be the toughest thing that I come across in the requirements because I could see it interpreted in both ways. And I call it the baseline language that we are proposing to you, the interpretation in my mind the only way I can interpret the recommendation language and the Board scorecard combined and this is what it means to me. So if I need to change this, I must have a real good reason and I haven't heard that yet.

So we're going to stay with this. We're going to come back to it, I promise. And let's think some more about it, and we'll try to re-tackle it and maybe by then we'll have some language, the conditional language that you're proposing, and see if that will help. Go ahead, Marc.

MARC ANDERSON:

Thanks, Dennis. I think I have a real problem with what you just said because I think I heard you say that you didn't hear an argument for why it needs to change. What that puts me in is a situation where I'm looking at an inability to comply with GDPR. Which is at its very basic element the purpose of EPDP Phase 1. And so if we end up with a policy

that in the end does not give the flexibility for contracted parties to comply with GDPR, then we failed in the primary purpose of the EPDP.

DENNIS CHANG:

So the language as written as you see it, it prevents you from being compliant with GDPR? Is that what I just heard?

SARAH WYLD:

Yeah, thank you. If I can build on what Marc said as I do agree with that. One of the really crucial things in the GDPR is a requirement to minimize the processing of data. We must only do processing activities when we have a very specific need to do so. So with some registries, there is a need to transfer this information to them, and we should do so in those cases. But it's not always the case. So I think it's important that we have that flexibility to comply with this minimization requirement by only transferring data when it is required.

And I do just also want to mention one other thing going back to the footnote about what the meaning is of optional. I'm not entirely sure that it applies in this particular case because that footnote was specific to the collection recommendation. And it's talking about what it means for data to be optional when being collected. And so I think that is a useful indication for how we also deal with the transfer of data, but I'm not sure it's always exactly the same. Thank you.

DENNIS CHANG: Okay, so that's 6.1, 6.2. And 6.3 is already a may. I don't suppose there is any discussion here but if you feel that this is wrong and it should be a must, I'd like to hear from you here too.

[BETH]: I think for this section if we're going to go and make some actual changes and redlines to it and suggestions, then maybe we don't go back and forth on it because I think that we'll be able to discuss it in a much more comprehensive and actually productive way if we've taken a second to review this one.

DENNIS CHANG: Section 7 is also a transfer. This time it's going to the data escrow provider. And I'm not sure if the same discussion must be had, but I do see one comment from [Jody]. You want to talk about this one? 7.4.13 is where I am.

[JODY]: Sure. Some registry business models don't have a registrant ID. So I'm not sure how we can put a must in there.

DENNIS CHANG: Hmm...I don't know.

[ROGER]: I mean, it seems easy enough to break it out into a 7.x and just put it in there. You know, just the one.

DENNIS CHANG: Okay, thank you. Yeah, you're saying if it's impossible to meet this requirement for those registry operators because they just don't physically have it. That's what you're saying, right? I didn't know that. Thank you for that. Anybody would object to that? I think I like your suggestion, Roger. Let's just break it out. This one element only.

AMANDA FESSENDEN: It's a must in the recommendation, so can you – you're suggesting we just change that from green to yellow?

DENNIS CHANG: No, no, no. I think he's – okay, hold on.

[ROGER]: Again, this is one of those data elements that I'm guessing got overlooked and they didn't realize that some registries don't have this data. Again, you can't be compliant with it if you don't have it. It's just a simple fact. I think it was just overlooked in the EPDP.

DENNIS CHANG: Is it impossible for them to start getting it or making things up a year from now? Can we just leave it as must and then ask them to create – is that one of those things? It's not possible?

[ROGER]: I'm not a registry, so you'll have to ask the registries.

DENNIS CHANG: Any registry want to speak up?

SARAH WYLD: I'm not a registry, but I will speak. Again, I apologize that I haven't had a chance to fully process this whole document, but it seems like this is similar to the question we had with the registrar expiration date and the registry expiry date where maybe it was just something that there was so much to do with the final report maybe we missed an element. So it might be something to go back and ask the Phase 1 team about.

DENNIS CHANG: So just on the process, there is no mechanism for us to go back to Phase 1.

SARAH WYLD: Right. What did we do with those other ones where we had to figure [inaudible]?

DENNIS CHANG: Oh, okay.

SARAH WYLD: We should do that same things now as we did there is what I'm saying.

DENNIS CHANG: Okay, what we did with those other ones is to make a decision at the IRT that, indeed, it was a I think somebody called it drafting error and we have decided that in all good faith that there was a mistake and we recognize those mistake and we have corrected that mistake in the implementation. And we will publicly share that in the public comment. But we did not foresee a reason to go back to the GNSO Council for guidance on that because it was so obvious. And we may want to do the same thing here. But it will be a case-by-case decision by the IRT. Those two items, we decided. So you will see that in the language of how we treated that.

SARAH WYLD: Thank you for reminding us how we did that.

UNIDENTIFIED FEMALE: I suggest we call this a drafting error. Or I propose that we call it a drafting error, go back to our folks who – because I’m going to just say that I’m not an engineer. I’m not sure if this is a drafting error or not. And because again, it’s not standard over the different business models of registries, let’s propose that this might be an issue and come back to it on the next meeting.

[FRANK]: [Frank] [inaudible] from the Motion Picture Association and the IPC. I apologize for two things. First, I think I’m jumping back a little bit to the green/yellow, must/may, etc. But also I should caveat my question by

saying that I'm fairly new to this process. So I need more clarification than really making a point that I'm 100% sure of.

My understanding is that the transition to thick WHOIS is an agreed policy. So here we're talking about implementing another policy. Since transition to thick is agreed to, I assume that we can't do anything that would undermine or prevent that or make it of no effect. So it seems to me that we're crossing that line. That we're talking about things that would, in fact, nullify a little bit the effect of transition to thick WHOIS.

So can someone explain how what we're discussing is or isn't compatible with transition to thick WHOIS? So that we can ensure that we are, in fact, allowing completely the transition to thick WHOIS to produce full effect.

DENNIS CHANG:

Okay, so very quickly the Board scorecard if you read that made it very clear thick WHOIS is still in place. And it is a policy we must adhere to. And you're talking about transitions. But a lot of the gTLDs are already thick. And this policy that we're writing here is with the assumption that thick WHOIS is in place, and that's what we're trying to do. If that makes any sense to you.

[FRANK]:

Sorry, I apologize. I understand what you're saying. So let me respond to that. You can state this policy, in this case thick WHOIS, is agreed to and we must take it into account and we're not supposed to counteract it. But the fact that we would say that has no effect. We have to ensure

that what we're writing here whether we're color-coding it green or yellow or whatever color, replacing may with must with shall with whatever, that is what's going to, intentionally or not, counteract or nullify or limit the effect of thick WHOIS. So that's one point that I would make. And again, that's where I'm not sure that we're doing a good job.

Point two, I understand that thick WHOIS is, in fact, already the reality for a number of gTLDs. But it isn't for some others. And so I think that's where....

DENNIS CHANG: I understand. Are you familiar with Rec 27?

[FRANK]: No, I'm not.

DENNIS CHANG: Okay, please, I think I have to – come talk to me later if you are wondering about the process and how we deal with it. But I would like to continue with the IRT meeting on the policy language. Is that okay?

[FRANK]: Well, I mean....

DENNIS CHANG: Because you must understand all the recommendations before we can talk about any specific things like that.

[FRANK]: So you're confident that there's....

DENNIS CHANG: I'm not making any judgments. All I'm asking you to do is defer your comments to me later and talk to me, and I can go over it with you because you must understand Rec 27.

[FRANK]: Sure, I'm happy to do that.

DENNIS CHANG: Okay, thank you.

[FRANK]: And then we can maybe then come back to it later. Sure.

DENNIS CHANG: Yes, please. [Ruben], did you want to speak?

[RUBEN]: I'll just repeat a comment I made in a previous IRT meeting. While there is policy guiding transition to thick WHOIS, the facts on the ground that currently there are both thin and thick registrations. So we can't make a policy that addresses just some of those registrations. We need to make a policy that addresses them all while they exist.

DENNIS CHANG: Got it.

SEBASTIEN DUCOS: I just wanted to come back to the field, the registrant ID. As a registry and a registry backend operator, as a database operator, I don't see how a registry backend would operate without some kind of an ID. It may not be something that they publicize, something that they show. It might be a field that is inside the database and not provided. But I don't see in some form an ID, an index, I don't see how they operate.

Was there at any point in the discussion, in the policy development discussion, a requirement for it? I'm thinking specifically because of anonymization of information or something like that. Was there any reference to that? Or do you genuinely think that it's an oversight and you can operate without?

[ROGER]: Okay, I don't know why I'm arguing this point. I'm just pointing this out because I think that there is going to be trouble coming down the road here. First of all, if it's a thin registry, they don't – if it was me, I would not have an ID because all the domains look like they're owned by one person because I don't know who they're owned by. I only know that they're divided by registrar. That's it. The reseller ID might be passed or it might not. But there is no pointer or hash in there that says this domain is owned by this person or anything like that. That's how I

would design it. I'm not sure. If someone would like to speak to that, that would be great.

DENNIS CHANG: Go ahead, Beth. Oh, Jim.

JIM GALVIN: Thank you. Jim Galvin from Afiliias. I'm not really a part of this team, but I'll offer a comment from a registry perspective. In listening to all this conversation, it just seems obvious to me what Beth was saying earlier. This is just a drafting error. I mean, it just fundamentally has to be.

If a registry doesn't have this number, as GoDaddy said, and I take them at face value that there are registries that don't have it, then it doesn't need to be unique in any kind of global context. And therefore, even to Sebastian's point, even though it is fairly obvious that in a database you're going to have some kind of unique identifier that exists, that's local and internal to the registry and none of the rest of the world cares about it and it doesn't need to be in an escrow place.

And if they're not interacting with the registrar on that data point, then this falls into the same category as all of the [date] nonsense. You just put it into a side into something that says if you have it, then that's what you escrow. And if you don't, then it isn't really anybody's problem but your own. And it really should all be okay. I mean, it has to be a drafting error. With all of the detail that folks were looking at, this was just something that was missed, that's all. Anyway, thank you.

DENNIS CHANG: Thank you, Jim, for that practical comment. Yes, IRT can and we have the ability to treat it as a drafting error and go to public comment treating it as a drafting error that we're correcting. However, on the process side I've heard several times and I'm probably going to hear this again, let's go back to the EPDP Phase 1 team and ask them. Just recognize that EPDP Phase 1 team is no more. Right now, we have an EPDP Phase 2 team which is a different makeup.

But the reason that we have the IRT is so that we have those people who were in the EPDP Phase 1 team right here. So this is where we need to ask the question and come up with the answer. And if it's not clear, we'll have to do the best of making that decision ourselves and go forward. We do have the public comment opportunity where we can collect everybody's input. Go ahead, Roger.

[ROGER]: Thanks. I'm just going to agree with Beth. Let's just mark this as a drafting error. Just note it when we go to public comment that that's what we think it is and these are the reasons and call it out so people see it more noticeably and move on from there. Thanks.

MARC ANDERSON: Thanks, Dennis. I agree with the points. It just seems like a practical way to move forward. I do want to go back to the point that was made about the conflict between what's in this policy and the previous thick WHOIS

policy. Because there we had very specific – you mentioned the Board scorecard – we had very specific instructions on this.

If you could pull up the chat, I posted in chat the Board resolution. The Board when they approved this, they knew full well that it conflicted with the existing thick WHOIS policy. They note that with respect to Recommendation 7 the recommendation does not repeal or overturn existing policy. They further specifically direct ICANN Org to work with the Implementation Review Team to examine and transparently report on the extent to which these recommendations require modifications of existing consensus policies, including the thick WHOIS transition policy.

So here I think they knew, to your point, they knew that this policy conflicts with the thick WHOIS policy but does not specifically overturn it. Which puts us in a little bit of a sticky situation. So they provided specific instructions there. And that's from the Board resolution.

If you look at the Board scorecard that you referenced, the last sentence on that says where modifications of existing consensus policy is required, we call upon the GNSO Council to promptly initiative a PDP to review and recommendation required changes to consensus policies.

So they did not instruct the IRT to reconcile the two. They didn't instruct us to implement these recommendations plus the thick WHOIS policy. They instructed us to implement this policy as it was written and note where this policy conflicts with existing policies and send that to the GNSO Council to resolve. So we have very clear instructions on this one.

DENNIS CHANG:

So Rec 27 is where all that discussion happens, and I don't think we have time at this meeting. But in one of those, maybe the next IRT session, we will talk about Rec 27 in detail.

So let's continue with – we only have 15 minutes I was just advised. So there are a couple of things. The important thing, one is the timeline that we must talk about before we get out of here. And the other is Rec 18. This is another area where I thought there was an IRT split. We had some recommendations that said that all of this requirement be deleted. And I just remind you we cannot do that because we must implement the recommendations. So we must have policy language addressing the urgent request, the criteria, the timeline. So it's here. But recognize that there are differences in the IRT on what we must do in terms of language. Go ahead.

SARAH WYLD:

Thank you. Specific to the question of the timeframe for urgent response to law enforcement, I just want to flag for the team that we had a very robust discussion about that in the Registrar Stakeholder Group meeting. Yeah, it was great. It was one of, I think, the most participatory moments we had on Tuesday. So I got a lot of feedback from the team with different areas that they want us to look into as we work through that. So I'm going to do some research when I get back to Toronto and hopefully have further input on that one early next week. Thank you.

DENNIS CHANG: Was that just the registrar or with the law enforcement folks together?

SARAH WYLD: No, this was only within the Registrar Stakeholder Group at our constituency day meeting.

DENNIS CHANG: Gotcha. Thank you. I look forward to hearing back from you. If there's no more comments on Rec 18, we're going to move on to the timeline. Okay?

All right, I'm going to do it this way. In the IRT workbook, you'll notice that I added another sheet called "Timeline." Let me see if I can make this a little bigger for you. Does that look a little easier to see? It's in the IRT workbook, so you can go into it and check it.

So I was working on it this morning about how should I facilitate this discussion. So the thing that is important is two milestones that everybody is looking for is when is the policy going to be announced and when is the policy going to be effective? And you all know the difference there, right?

So at this time period is when you'll receive a legal notice from ICANN to say that you must implement this policy language and we publish the policy language. That's that point. And this is the point where you would have to have completed your implementation and you must be compliant to the policy.

So those are two key milestones that are important to all of us. And then the other key milestone that public is looking for is this right here. When do we get to see this draft so that we can comment on it? When do we start the public comment? To start the public comment, of course, we have to finish our implementation plan. Does the sequence of events make sense to you? Go ahead, Margie. You have a question?

MARGIE MILAM: Sure. Again, I've missed some of the IRT meetings, so I don't understand how we've come to such a long implementation plan when the policy itself said February 2020. And at least from the BC perspective, there are certain recommendations that are more important to be implemented in a more expedient manner than others. In particular, Rec 18 is the one.

DENNIS CHANG: I understand. So, Margie, ignore the timeframe for now. I want to talk about the sequence first.

MARGIE MILAM: Okay.

DENNIS CHANG: I've thrown it up here so we can have the discussion. So we haven't said that this is the new schedule. This is so that we can have that discussion. And what you may have missed is [Ruben's] last email advisory to the GNSO Council saying that February 29, 2020, date is not feasible. You may have missed that, but that is what was advised and the IRT was in

full agreement to send that notice to the GNSO Council. So recognize that we have already said that February 29, 2020, is not feasible now.

Then the question is, if not that date, what is the date? And it's for us, we collectively have to come up with that date. That's why we're having this discussion. Does that make sense?

MARGIE MILAM:

Yes. And if I can follow what I was trying to say, is there a way to break out some of the recommendations that the get implemented earlier? I look to my colleagues on the contracted parties house since we've had this discussion. Some of us have had this discussion because of the difficulty in the current process of receiving responses to disclosure requests. And we think that Recommendation 18 would go a long way in getting rid of some of the problems and the chaos that we're seeing today. So, Marc, I don't know if you're able to share what your group is thinking.

MARC ANDERSON:

Thanks, Dennis. I'll jump in here real quick and say this is a conversation we've been having, but I'm not sure we've come to full agreement. And so I'm sort of uncomfortable jumping in right now. I recognize what Margie said. We had conversations about this, and so this is something that we're having right now. But I don't feel like I have clear direction right now to respond, so I guess I'll just maybe ask for a little bit more time to consider it.

SARAH WYLD: Thank you, yes. Recognizing that we have four minutes left in this meeting, I agree. I don't think we can get into the substance of this. But also I have to say I don't think that there is a substantive difference between what we are doing today and what's required under the temp spec and what we see in Recommendation 18. The registrar group has best practices that are very closely aligned with the Rec 18 requirements, and I don't think we're going to see a very big difference in what these people are already doing. And I would challenge the statement that there's chaos right now. That has not been what I've seen. Thank you.

DENNIS CHANG: Thank you for that comment. Roger?

[ROGER]: Thanks. I would agree with Sarah that I think a lot of people are doing this, but I still feel the urgency and I think it's valid to talk about. I would ask staff if there's precedent for this of breaking out a recommendation for implementation early.

DENNIS CHANG: There is precedent.

[ROGER]: Okay. And I think that it's valid to talk about. Thanks.

UNIDENTIFIED FEMALE: I want to say that I think it's been the intent of both parties from the Phase 1 work to make that happen. And since there is precedent and there is a need to make it happen, based upon our job as policy implementers it's something that should definitely be worked on.

DENNIS CHANG: So it's clear that we're not going to be able to come out with an agreement on a new timeline at this meeting. So let's take an assignment and I'll assign this to you to look at this and think about it.

The important thing that I want you to see is this implementation six-month default that has been a default. That is subject to change. It could be shorter or longer. So that's the first thing that you would probably want to look at because that matters a lot on when the effective date is.

But recognize the fact that when we publish a policy announcement, we are going to publish it in a way of using a no later than date. That is a technique that we can do. So if you want to be compliant on date two, you can be. So there's nothing that is going to prevent you from implementing the whole thing.

And the other thing is public comment is not something that we really have a lot of control over. Especially if it spans between ICANN meetings, we must allow them enough time to comment. Especially this policy is something that.

And then finalizing the policy, we expect that we are going to receive heavy comment on this policy. And we will have to come to an agreement before we publish.

But most importantly right now, implement plan. We have a One Doc that is for you. So it's critically important for the IRT to be reviewing that One Doc and identify and highlight those areas of disagreement. And we have to figure out how to come to a resolution within the IRT as quickly as possible.

So that's the challenge for all of you. Roger, you want to speak?

[ROGER]:

Thanks, Dennis. I was just going to comment it's nice to see the steps. So I think we're all on board that those are the steps that we need to take. From staff's perspective, is there a set time for the comment period? Is it going to be 40 days? What is it going to be for it? Thanks.

DENNIS CHANG:

Minimum 40 days. But if things like – and I noted this on the calendar for you – for example, if the ICANN meeting or GDD Summit is in between, we allow extra days so that you don't have to do two things at one time. And that has been our tradition. It's sort of a customary thing to do. Question?

UNIDENTIFIED FEMALE:

Sorry. So on one of our calls we talked about asking the GNSO for more time. We never talked about a timeframe, and that was something I

tried to nail down on that last call. And so I'm a little bit concerned with all the work in the community and how important this is that this is stretched out so far. I think there are some key places that we can shorten this timeframe and try to bring it in closer to six months' delay instead of a year which seems phenomenally long right now.

So I would urge us to really look at these and see if the implementation plan – I mean, basically we're going to add four more months. I think if we just got in and did the work, we're getting close with the One Doc. That we could shorten that time period up. You've got it looks like three months for public comment. March, April, May. That seems long.

So I would urge us to really give it a hard look and make sure this is shortened up, tightened up because we also will have the Phase 2 of the EPDP report to work on. So lots of important stuff going on.

DENNIS CHANG:

So the ask is for us to review this and see where we can tighten it up so we can get it shortened. And let's just do what we've been asked to do. I think there is a desire that we get out with a policy as quickly as we can. So it's really up to us.

And what I'm saying is that we already have a One Doc, right? If next week you guys all agree, then we're done. But I don't think that will be the case. So we're going to have two more sessions. We have one more meeting in November, November 20. And we have scheduled two more sessions in December. So those are in your calendar.

But please before then as you leave review your One Doc. Your due date is November 15 as per your assignment. So there's your homework. Any more questions and comments? Thank you very much. Thank you, Andrea.

ANDREA GLANDON: Thank you, everyone. Have a good day.

DENNIS CHANG: Bye-bye.

[END OF TRANSCRIPTION]