ICANN74 | Policy Forum – GNSO Registration Data Accuracy Scoping Team
Tuesday, June 14, 2022 – 13:15 to 14:30 AMS

DEVAN REED: Hello and welcome to the Registration Data Accuracy Scoping Team.

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For the benefit of other participants, please state your name for the record and speak at a reasonable pace. With that, I'll hand the floor over to Michael Palage. Please begin.

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MICHAEL PALAGE: Thank you. Welcome, everyone, to ICANN74 and the Registration Data Accuracy Scoping Team planned meeting. Originally, if you look on the wiki right now, this is the proposed agenda. This is potentially going to be a little dynamic. We have had a request from our GAC colleagues to potentially alter this to permit the juggling of—and now we have Melina, so excellent. So what we are going to be doing here is we are going to be pushing the brief recap actually down a little. We're actually going to Assignment 3, which is the finalizing the write-up for Assignments 1 and 2 so that we can deliver this to the GNSO Council.

So, Marika, could you pull up the document? I think what we want to do right here is I think the first place to start would be footnote on page 10. I don't recall the specific footnote. But for the benefit of those that are perhaps new, I'd like to give a little context here.

In trying to just come up with a construct for accuracy, the group originally began with the 2013 RAA. In that document, there are specific requirements regarding syntactical validation, as well as operational functionality. As part of our interaction with ICANN Compliance, there was a feedback given regarding what they deemed to be patently false information. Now, what happened was that text, which now appears in the footnote, was originally proposed to appear in the body of the text. There was some

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concerns raised, I believe, by both the Registrars and the Registries that they thought that this would be better suited to be included in the Appendix with the rest of the feedback from ICANN Org and ICANN Compliance. The potential compromise that was put forward was, as it appears now, this text to appear in the footnote.

During our last call, we were going back and forth. I believe Lorraine from the GAC spoke to this, and the hope was that members of the GAC and the contracting parties would be able to potentially speak to this particular subject of, is this acceptable in the footnote? So I guess, if I could, Melina, just being respectful of the limited time that you have with us today, do you have any update that you can provide on whether you find it acceptable for this text to be in the footnote, or whether it is the position of the GAC that you feel that this should appear in the main body of the text? If I could call on you, Melina.

MELINA STROUNGI: Yes. Thank you, Michael. Hi, everyone. I'm so sorry that I could not be there with you in person. And just to start and meet you all, we had everything planned, our tickets booked and hotel arrangements, everything done, but we had to cancel last minute because apparently me and some other members were not deemed fit enough for the event's health standards. So I'm really sorry that I could not be with you there today.

Now, for this particular point, I really hope we can address that we can solve it because it's really just a matter of placement of the text, the substance does not change. And for us, it is quite an important point. From my side, I tried to really bilaterally with Beth to try to solve it, but unfortunately, it was not possible. So I hope we can resolve it today.

As a quick reminder about our reasoning, we would prefer not all, part of the footnote to be inserted in the text. For the simple reason, because Assignment 1, if you also see how it is described in the GNSO instructions, it is about not only the contractual obligations but also about the enforcement and reporting, and also states that any input from ICANN Compliance should be taken into account. So basically, what we want to give to the reader, what is the usefulness of this whole exercise, is for someone to read the text once and with one goal to understand the totality of the requirements that are in place and how these are enforced. Before I personally started this meeting, I did not know about all these requirements and how they are enforced. Now that they have the total clarity, I think it would be beneficial to have it in a prominent place in the text. So it's not hidden in a footnote. The Mickey Mouse example, of course, can stay as an example in the footnote. But the point of how requirements are enforced when information is patently inaccurate, including the name of the registrant, should be placed in a more prominent place in the text.

Now, I understand that argument raised by some members that maybe if we do that the reader may be confused and may think that this is a contractual requirement while it's not. So what we propose as a compromise from our side is to clarify very explicitly in the beginning that this input comes from ICANN Compliance. So basically, to say in terms of enforcement, basically demonstrate that this is the enforcement now side, it's not in the contract requirements. So in terms of enforcement, according to ICANN Compliance, this includes cases where the name or contact information of the registered name holder pass the form of validation but are patently inaccurate and have the footnote the Mickey Mouse example.

I hope it's quite reasonable. For us, it's very important. And we do clarify that we're talking about enforcement, we're talking about that's something that came from ICANN Compliance. So there is no margin of someone confused and think that this is part of the contracts. So I hope we can solve this today.

Just as a reminder. The GAC initially had proposed this wording from ICANN Compliance that the requirements are not strictly limited to X, Y Z. And we have said in the beginning that it's fine for us to strike out the not limited wording as far as we are exhaustive in the main text and capture the whole picture. Now that this wording has been striked out, it's important to be exhaustive in the main text and just put this part in a more

prominent place in the main text. I will stop here to see any reactions. Thank you.

MICHAEL PALAGE: Thank you, Melina. We have two people in the queue. Volker, you have the floor.

VOLKER GREIMANN: Thank you. I think it's astounding how much time we've already spent on this clause and its footnote, and time that probably could have been spent much better on other things could have been what's done. Let's leave that aside.

Personally, I think the entire text as it stands is already in compromise. There are many issues with the text that many imprecision with the text that we would like to see changed. If we now open this up again, to just add the reference to ICANN Compliance, which in our view does not add anything of substance, we would probably need to look at what we would like to change as well. I don't think it adds anything that I propose to leave the text as it is and close this topic once and for all. Thank you.

MICHAEL PALAGE: Alan Greenberg, you're next in the queue.

ALAN GREENBERG: Thank you very much. The reason I believe it does add something of substance is this was an issue that was discussed a fair amount in this meeting in this group before we got the answer from Compliance. And the absolute belief of many of us was that this was not within the remit of Compliance to take action in cases like this. Now, cases like this patently inaccurate, maybe not the most common thing. But nevertheless, there was a belief that ICANN Compliance would not take any action if the data was technically valid and seem to match the parsing rules and, if necessary, the verification rules. But simply, it was wrong. It was clearly wrong. And there were examples given where Compliance in the past has refused to take action where the information may have been technically accurate but clearly and patently did not belong to the registrant.

So the fact that ICANN Compliance in this reply made it clear that they can and will take action in such cases is what makes it particularly important and interesting. Many of us who have been around for many, many years believed that was not the case, and this reverse did completely. And that's the reason that it adds something of great substance to this text. Thank you.

MICHAEL PALAGE: Okay. Thank you, Alan, Melina, and Volker. So part of what I think we need to do is bring closure to this. Now, I believe one of the original parties that I believe proposed this—and I was just

looking in the chat. Lori, I believe this was the proposal that was put forward by the IPC. Given what you have heard today from Melina expressing the concerns of her GAC colleagues, and what you have heard from Volker and the rest of the contracting parties, do you feel that you have been swayed? I want to kind of go back to you to get your insight on how do you see us perhaps bringing this to a proposed conclusion? I am not proposing that anything be finalized today, but I would like to have those texts that we could consider and hopefully wrap up.

LORI SCHULMAN: Thank you, Michael. Lori Schulman for the record, representing the IPC. I understand Melina's reasoning and Alan's reasoning, and I'm sympathetic to the reasoning, absolutely. I mean, typically, we align on positions here. But on this particular point, I do recall we had been at a standstill at least a month or so ago, and it's when the IPC said, "Look, let's not bury this in an annex. Let's keep it up front. Let's keep it where somebody can see it." It was a quick glimpse and still get the meaning. I understand some of the text has changed, and that's why I am sympathetic.

But quite frankly, I think, to Volker and Owen's points, I do believe we had reached a compromise. It was something we had all agreed to what I would call a slightly changed circumstance. I think that keeping the footnote foremost, easy to read, on the same page, not buried in an annex or appendix would need a

compromise situation. And so I support the footnote remaining. Or I should say IPC does.

MICHAEL PALAGE: Okay. Again, in the interest of time, and again, respecting that we only have, I believe, 15 more minutes. Melina, you have the floor.

MELINA STROUNGI: Thank you. Just a last remark from my side, because unfortunately, I have to move to another session where I'm presenting. The way I understand the instructions that we have received by the GNSO is that when we are capturing the entire state of play, both in terms of enforcement and contractual requirements, we have to take into account any input that comes from ICANN Compliance. It's not a matter of whether we like it or not, because I say that some comments in the chat like how do we know if it's patently inaccurate? How do we know this or that? It's not on us to assess it. It's for us to capture it. We have made some clarification questions, as Alan said, and we received very specific input, which, in my view, adds up substance to the text about what happens also when the name is patently inaccurate. I think it's our duty to by the letter of instruction to capture this in the main body of the text because it is a way to enforce it. And we can stress again that this input

comes from ICANN Compliance, it's not how we interpret the requirements. But it's a matter of having the complete picture.

Also to remind that the GAC made this comment already weeks ago, no one had contested it for quite some time. Again, we accepted to remove certain wording, not limited to wording, on the condition that this text would be added in the main text. If it is to be buried in a footnote, maybe we want to bring back the not limited to wording. So it's just this as a last remark. And I hope we can resolve this. I don't know if this is a question to the contracted parties. Is this something really that you cannot relate with, because in terms of substance, it doesn't change, I think. But for us, it is very important the place in the text. So I hope we can reach a compromise there. Thanks.

MICHAEL PALAGE: Volker, you have the floor.

VOLKER GREIMANN: Ultimately, Compliance is just another party. They have an opinion that might be wrong, it might be right. Compliance has a certain interpretation of the contracts. But this interpretation is frequently wrong. We had multiple cases where we had to explain the contract to Compliance, and they come back with us with, "Okay, your interpretation is equally valid so this will not be pursued." Therefore, having to state that some information

comes from Compliance is virtually worthless because then we would have to include for every party who says something that this information in this statement comes from that party, and we're happy to add that for every section in this. It's going to take some time. Do we want to waste that time? I don't think so.

MICHAEL PALAGE: So, for those listening along in the chat, Amanda Rose from ICANN Org Compliance has stated that this is an example of what is sufficient to trigger requirements under Section 3.7.8 of the RAA, not that Compliance is determining whether it is or is not accurate, rather that's something sufficient to request the registrar to take reasonable steps to investigate a claim of inaccuracy.

So, let me just check the rest of the queue here. Are there any other hands? So, again, in the interest of time, what I am proposing to do right now is based upon what I am seeing in the room right now, there does not seem to be sufficient consensus to move the text from the footnote into the main body. Mindful of the compromise that was given, I do want to be respectful to the GAC.

Melina, what I will do is before we have our next call, where hopefully we will be at a point close to finalizing this and submitting it to the GNSO Council for review, I will give you the opportunity to see if there are other members in the Accuracy

Group that feel that are supportive of your position. So again, in the interest of time, I am going to consider this topic closed for purposes of today's discussion. But again, Melina, if you and your other GAC colleagues can get support from other team members to push, I think what we have heard from Lori is that this is perhaps a compromise that does work for the group, recognizing that no one is really happy with this, which to me perhaps is the ultimate definition of consensus in spreading the pain equally.

So therefore, what I would like to do now is move to I guess the next biggest topic, which is what do we do after we complete this assignment? Again, Melina, I believe the GAC did have some comments. So I want to give you the ability to speak first to this topic by way of background for those that are just tuning in.

The work of the Accuracy Scoping Group was broken down into four assignments. The last six to eight months, we've been focused primarily on Assignments 1 and 2. What is being considered or what is proposed right here is that the work of this group be paused. And part of that pause will be to allow a potential response to ICANN's letter to the Commission and outreach to the European Data Protection Board, which we will be giving an update on shortly. That was the first one. And then the other one was to perhaps identify what additional data elements we would need to undertake Assignments 3 and 4.

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So what is currently appearing in the draft is a proposal to, if you will, suspend or pause the work of the group. There have been concerns raised that pausing this may somehow remove the visibility. Privacy/proxy was paused. Cross-field validation was paused. There have been a number of situations where things have been paused in the past and have never been reengaged. So with that as kind of to tee it up, I will—okay, Marika, there you go.

MARIKA KONINGS: Thanks, Michael. Just to add, there is another recommendation in here that relates to undertaking a registrar survey. So I just want to make sure that people understand that it's not about pausing and not doing anything at all. There is a proposal here to conduct a registrar survey that would be voluntary, that would not include personal data, but that still the group believes is worthwhile exploring to get further information. So that is work that would be undertaken in the interim. But obviously, that's probably not something that would require weekly calls of the group. If the group agrees to put that recommendation forward and the Council agrees and request ICANN Org to do that, now ICANN Org would start working on that in line, of course, with resources available to do so. And of course, check in with the group to make sure that the survey is asking what is expected as well as I think there's a request for looking into

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incentives to encourage participation and obviously work with the Registrar Stakeholder Group to promote the survey.

So pausing is not about not doing anything at all, it's just that certain part of work may not be possible at this stage. But of course, as Michael just said, if there are specific suggestions on what else should be done in that period of time that clarity is sought from the EPDP, I think this is the moment to discuss that.

MICHAEL PALAGE: So, Melina, recognizing that we only have seven minutes left before you need to go present to the GAC, you have the floor.

MELINA STROUNGI: Thank you, Michael. Basically, our concern is the following. It is hard to see what is the benefit of completely pausing the work. Okay. We understand that in parallel, there will be this survey. But we don't understand what is the benefit of pausing the work on something, on waiting for feedback on something that it's only ICANN relate it. So the entire scenarios of ICANN submitting to the European Data Protection Board relate around questions on whether ICANN has a legitimate interest to access registration data, while part of the assignments that we have is to assess the efficiency of the current requirements and how these are being implemented by the ones who currently hold the data, which are the contracted parties. So I believe there is room

for work to see how this is done. And I understand also the survey partly aims to do that. But at the same time, everything is on the air, we have no clear picture. First of all, when the European Data Protection Board will reply to these questions, if they will reply, what they will reply, when they will reply, if the input will be of any value. Second, the same ambiguity is also in relation to the survey because it's voluntary. And again, we can't say how many will come back and what kind of replies will come back.

So I'm just wondering—and this is a question to the group—if we really believe that there is absolutely nothing else we can work on while of course waiting for input on these two issues. That's the only concern that we have. We're not convinced that it will be super effective if we completely pause. So we're just wanting to explore within the group, if you really don't see any other areas of work, we can progress on for Assignments 3 and 4. Thank you.

MICHAEL PALAGE: Thank you, Melina. Volker, is an old or a new hand? Alan, old or new?

ALAN GREENBERG: New.

MICHAEL PALAGE: You have the floor, Alan.

ALAN GREENBERG: Thank you very much. I think we need a thought experiment here of what might happen if what we get back is ICANN Org does have an interest and a valid reason for accessing data under some conditions, data that is normally redacted for the purposes of verifying to what extent accuracy either the current ones or potentially some future accuracy requirements are being met. That's very interesting. But then it says, "Okay, now what kind of things do we measure? What kind of statistics are we interested in?" There's no reason we cannot look at those things right now.

To actually get data on how accurate is the data is going to take months and probably years after a positive response from the European Data Protection Board. So I don't think we want to pause this group for three years or whatever, for two years, until we actually get back reports. So I believe we should be looking at what would we look at if we are allowed? That's number one. And number two, we are also being asked in the latter parts of what level of accuracy do we want/do we need to satisfy the needs?

Remember, what is currently in the RAA has something that came about in 2012 through negotiations. And give and take, we know there are things in there which were never implemented,

so at the very least, that's not accurate. There are many who believe that we need a different level of accuracy being specified, one that still is going to be economically possible to implement but nevertheless is different from what we have right now. That doesn't require permission from Data Protection Board. That's a discussion we need to be having. And ultimately, depending on the Data Protection Board response, we may be able to either have to trust registrars and, through process of audits, verify that it's being done, or we might be able to actually test the data. But regardless, we still have an obligation to look at the levels of data and see what is needed and what we want. Thank you.

MICHAEL PALAGE: Thank you, Alan. Sarah, you have the floor.

SARAH WYLD: Hello. Thank you. I hope you can hear me okay. I guess I just continue to be a little bit confused about exactly what this proposal is. What will we be looking at? What work can we do? We did exhaustive work on a gap analysis. I just posted our Google doc link in the chat. We looked at different ways to measure accuracy. We have a lot of suggestions to figure out how we can tell if data is accurate. And this group decided that none of these options are feasible in the moment. They're things that either would take a bit of work to set up and maybe won't

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be reliable like a voluntary survey of registrars or things that require ICANN to process data, which is why these questions are being sent to the Data Protection Board.

So, if there is a proposal now to continue doing work to measure accuracy, I am all for it. But that was what we were doing in Assignment 2, it was considering how to do that, how to figure out what's going on. So, if we're going back to Assignment 2, I think we should all understand that. And if we're saying that we're not going to pause the work now, then we need concrete understanding of what exactly we are going to do, what exactly. Thank you.

MICHAEL PALAGE: Volker, you have the floor.

VOLKER GREIMANN: Thank you. I'm partially agreeing with Alan and partially with Sarah. Ultimately, I think it's in our best interest to bring this thing home as soon as possible, and wasting any time by pausing is hurtful. I think it's not something that we would like. But on the other hand, if we do not have anything substantive to work on, until we have the data that we need, then we will only be doing donuts and flying waiting patterns and wasting everyone's time and ICANN's money. And that's also not in our interest.

So basically, yes, if we can, and if we do have something substantial to do that's worthwhile doing, then by all means, let's continue doing that. That might mean that we go to biweekly or monthly meetings so we have something more to do, just to tide over. Or if it means pausing, then pausing might be the best choice. But if we have something to do that we can do, then let's bring the thing home.

MICHAEL PALAGE: So here's my assessment and I'm going to give you my opinion. Again, this is my opinion is what I'm trying to be as a neutral chair. So people can disagree with me. I have the concerns about pausing this. In 23 years, pauses in ICANN processes do not generally end well, in my opinion. I think Volker makes a very good point. Instead of the current weekly cadence, is this something where in the interim, maybe we meet once a month, once every other week. But I see no need based upon where we have gone that continuing a weekly cadence in this interim period would provide much benefit. So that's kind of how I'm trying to split that one down the middle.

As far as what work can be done, I do believe—and again, I know we've always been careful about citing pending legislation. But if you do look at NIS2, which is completed trialogue and is very close to being finalized and published, then, obviously, the transposition period international law, there are specific

references in the NIS2 that talks about best practices. I have previously mentioned in the past some of my experience with ccTLDs that have had their own accuracy programs, registrant verifications and other of these different issues. When I had proposed this in the past, there was pushback from some of the contracting parties about we have not identified that there's a problem. So until we've identified that there's a problem, we really shouldn't be looking at doing this because this is just going to add extra cost. To me, I think that that is a potential middle ground.

So just mindful of Sarah's question that she just posed to the queue, to figure out how to measure accuracy. I think that that is our assignment. What I find interesting is when you talk to ccTLDs, they believe that they have come up with a way of doing that. There are a number of them that have implemented it. Now, you can agree or disagree, think the particular things are unique to them. But again, I'm going to hit pause there. I just wanted to give you my assessment as to listening to the group and listening to the different sides as a way of potentially offering that as a path forward. Manju, you have the floor.

MANJU CHEN: Thank you very much. I guess I see both sides, too. There's definitely harm in pausing because then people forget these things and we have a lot of other things, too. But I really wish

those who are against pausing to suggest something we are going to do, because I hear a lot of voices about pausing is harming our processes. Like we're going to slow down or we're going to just forget about this. But then I'm not seeing any specific proposal, "So this is what you do, instead of pausing." There's nothing that suggests what to do and you're against pausing, what exactly are we going to do? So exactly like Sarah was saying, what exactly you want us to do if we're not pausing?

There was the suggestion about have it as homework for us to suggest aspects of what to do. I agree, but I think it should be for those who are not for pausing. I don't want to be scolded for not doing my homework because I really don't see anything else to do. So if you're suggesting we don't pause, please come up with a proposal. I think that will definitely facilitate this discussion of pausing or not pausing. Thank you very much.

MICHAEL PALAGE: Thank you, Manju. Manju, you actually, I think, provided an interesting comment there. Let me throw this out there. Instead of pausing, do we just say we want to conclude our work? Is that another option? Because that is my concern here. Just listening to it, we just sit there and say, "This is what we've done." Part of the challenges that I have seen is the charter itself was at time—I don't want to say overly restrictive, but literally limited what we can do. And even these members in the group struggled with

coming up with what is the definition of accuracy. We could not define the term accuracy. We tried to explain it in the context of how it appears in the contract. And this to me was one of the issues that I had with ICANN Org's letter to the Commission about accuracy. We ourselves have struggled with what that definition means. If you look back to the work at the EPDP Working Group there, the definition of accuracy in the context of the GDPR, Bird & Bird gave memos, but now we have—Roger, I see you have your hand up. Lori you're first and then, Roger, you're next.

LORI SCHULMAN: Thank you, Michael. I saw in the chat, I want to respond to failure as an option. I hate to go that route because I'm not sure if we say we've concluded the work, if we provided any advice. It wasn't the whole idea to provide advice for a PDP.

Then we're down this rabbit hole again. I'm just thinking back to RPMs Phase 1, where we had this very—I'm going to call it liquid charter, where all the questions are kind of dumped into a cauldron and it took us two years just to sort the questions out. So the GNSO in its wisdom said, "Well, let's not do that again. Let's have a scoping team and try to refine the questions so we can give definitive questions." Now, if we're saying the scope of the scoping team is difficult, then I feel like we're kind of seeding a point that we shouldn't be seeding.

I don't really want to accept failure as an option. I would rather accept the pause with very clear guidelines about start-up. This is when we start. Rather than just throw our hands up and say not solvable. Because if we go down the not solvable route, then we're back in that circular argument that we're seeing in other aspects of ICANN, "Well, we can't fix it." And then if we can't fix it, then people go outside of ICANN to try to fix it. And then we are blasted for going outside of the multistakeholder model. So I'd like to stop that cycle and really put our heads together to solve something within the multistakeholder model. Well, I understand the sentiment about saying we're done and we might say we're done. I think there's a lot of risk here and I'm not sure if I'm ready to accept them.

MICHAEL PALAGE: Thank you, Lori. Again, one of the reasons I just put stopping as an option is to actually engage in a dialogue and hear. Part of that as a chair is to provoke and try to probe the group to move forward. Then I see Marika, you've raised your hand.

MARIKA KONINGS: Thanks, Michael. I do note, I think because I'm a co-host, I automatically go to the top, so I may be jumping over some people. What I'm going to say it may help the group in moving forward on this issue, because I just wanted to note that, of course, if the group is of the view that the questions that the

Council has asked are not the right ones, you always have an ability to go back to the Council to either ask for clarification or make suggestions. But the assignment was very clearly set up as a way of having data driven recommendations and make informed recommendations based on that data on what needs to happen next.

It seems that we're now, of course, in a bit of a phase where it's not clear if, how, when data is available. And I think you can ask the question, "Does that then make sense to pause or to stop until you have that?" That is, of course, something the group can consider. But again, there are options. If the group believes the questions are not right or there is something else the group should be working on, that is always something you can take back for conversation with the Council. But this is really focused on making sure that any recommendations that would come out of here are supported by data and facts.

MICHAEL PALAGE: Roger, you're next to the queue. But for Marika, jumping ahead because she's special. You're next. Go ahead, Roger.

ROGER CARNEY: Thanks, Michael. Marika and I think Lori said almost everything I was going to say. Again, I agree with those that say the failure is not really a problem here. We're not failing. We came to a

conclusion. So I think that's a difference. I think the important thing here is I don't know if it's up to this group to end this work. I think like Marika said, if we have recommendations, we give those back to Council like we're planning into in Assignment 1 and 2 and let them know where we set. Then Council makes the decision if this group can continue or not. It's not really this group's decision. So I think that's where we leave that.

Michael, you mentioned that our assignments, our charter here was restrictive or focused. I think to Lori's point on RPM, Council made that decision on purpose, I think. It was to restrict the discussion to something that's useful. And as Marika said, data forward, looking forward. So I think that we shouldn't be going outside the lines because that's what gets in trouble of making the RPM and subsequent pro and everything else multi-year process. Scoping team should be efficient and quickly at what they do. So I don't think we should be going outside of our assignment.

To our assignment, I mean, Assignment 3 specifically requires Assignment 1 and data from Assignment 2 to continue. And we don't have any data from Assignment 2 to continue. So I think that's where we had to stop. I think, Michael, you made a point on pausing something is usually not good because it usually doesn't start back up. But to Lori's comment earlier, RPM pause for a long time and get completed. So I think it is possible if it's

important enough and the data provides a path forward. Thank you.

MICHAEL PALAGE: Volker, you're next.

VOLKER GREIMANN: Thank you. Personally, I think failure is not an option. I think failure is not a word that we should be using. Just not achieving a result might not be failure. I think as a scoping team, we're not a working group and we have this very limited scope that Roger alluded to. Our job was to look at the available data and see whether there is a problem with the accuracy. I think everyone in this room agrees that there are inaccuracies in WHOIS data, but do they amount to a problem? Are they substantial enough to warrant policy work? I don't think we are able, at this point, to make that determination because we simply not have the data. Any subsequent work requires us to basically look at the data and analyze it to determine whether there's a problem with accuracy that needs for the work by a PDP. And if we can get that data, then all the better, we move on. If we are lacking that data, then we should have the option to pause until we can get that data and have the ability to make substantial work. I don't think we should stop. We should pause if we do not have anything to do. If we cannot do that, then ICANN should reconsider and maybe reopen this at a future time when we do

have that data. But at this time, I don't think it's failure to see that we do not have the data necessary to assess whether there is a problem. It's just to state how it is.

MICHAEL PALAGE: Thank you, Volker. Alan Greenberg, you have the floor.

ALAN GREENBERG: Thank you very much. I may have started this discussion of saying I think we do have work to do. Let me give two examples. One of them I gave before, one I did not. We spent an inordinate amount of time trying to figure out what the RAA says. One of the questions that I think we need to address—and I think there are ways we can at least start addressing it, if not finalize it—is that level of accuracy that it demands sufficient to satisfy the needs of those who need to have access, have a legitimate right to have access and get it? Number one, is it working? Number two is although we have reports saying it is hard to get the redacted data from contracted parties, I am presuming there are some people who are making the request in getting data. We have not attempted to go back to those people and get a real assessment of when you get the data, is it sufficient for you to make contact with the registrant, which is typically the purpose that they're asking for the data. So yes, it may be a small sample, but we have no idea. Is it working or not? Are they getting back data which in fact is patently useless to do the job or it's

sufficient to do the job? That I would think is data that we could get access to if we chose to. And it's an example of trying to get some real substantive information on whether we have a process working or processes broken. Thank you.

MICHAEL PALAGE: Thank you, Alan. Lori, you have the floor.

LORI SCHULMAN: Thank you. I'm wondering if the recommendation is get data. We're not ready to scope a PDP. Couldn't that be the conclusion? You asked us to scope. We've gone through the exercise. Here's where we are. We don't have data. We need data. Our recommendation is this is the data we need. So the next step is to figure out how to get it, if we can get it, then we scope. I feel like there's a step that's been created because if the one area where we all have consensus is we don't understand the scope of the issue. We have data prior to redacting WHOIS. We don't have much if any data after redaction.

I think it is a fair point from the contracted party's side to say, "Look, the state of affairs was four or five years ago, it's not assumed today." That's real and fair. But then when we're getting our hands tied is, "Well, what has changed? How can we change?" And we don't know what we don't know, because we have a lot of questions about access to data. Again, it goes back

to my chasing our tail situation. Maybe we just have to go through the steps diligently, carefully, and the recommendations are, these are the studies we recommend. This is the action we recommend. We don't recommend a PDP right now. We recommend this data gathering exercise and give it a timeframe. The GNSO, what we recommend ought to be done next. That could be a conclusion from the work. And then there's a decision to be made whether or not to invest in the data gathering.

So I would love to see some logic applied to this in terms of how we proceed. That if the scope didn't work or the scope presumed information that we didn't really have and now we need it, to say, "Hey, let's figure out what we need and get it." And again, whether you want to call it a conclusion or a pause, I think, is irrelevant. But I don't know how we tackle this issue without understanding how we get data. In a way too, there's rules around NIS2. Because there's language in NIS2 that requires verification, that requires accuracy. The governments are going to be tackling the same problem we have. It's going to be no different. Actually, it's the same. How do the governments … or how are they going to know about compliance on verification unless there's processes and procedures in place that give contracted parties the comfort of knowing they can disclose data without risk of sanctions under local and regional law?

Am I making any sense? I just feel like there's a global problem, we're trying to fix it internally. And there are probably ways we can do this, but we can't rush it either if we don't have enough information to even say what we think the questions are.

MICHAEL PALAGE: Okay. So here's my attempt to synthesize what I've heard from the group, and I put this forward as a proposal for consideration. Out of everything that I've heard over the last say 15 to 20 minutes, I come back to some of the comments of Manju about if you don't want to pause, please tell me what you want to do during that period of time. So what my proposal to the group would be to create a poll for every member and say pause or not pause. And if you say not pause, then please insert what you would propose us to have do during that period of time. I think that is perhaps the most objective way to go forward.

And if in fact this goes back, well, this is going to go back to the Council, and then we can then go back the Council and say, "We said pause, not pause. And for those that said, don't pause, this is what we wanted to achieve during that period of time." That is my proposal. I guess, Manju, is that something that sounds good? Again, you were the genesis of this idea. Or did I swing and miss?

MANJU CHEN: I think it sounds good. But actually, there were two people raising their hands before you asked me, but now there's only one.

MICHAEL PALAGE: Volker?

VOLKER GREIMANN: I would like to start with prefacing that at the Contracted Parties House. We do not necessarily want to pause. If we can land this baby as quickly as possible, the better. We want to be able to get to a point where we achieve a final report as soon as possible. So if we do not have to pause, then that will be perfectly fine. But any time that we spend should be meaningfully spent. So if we just do not pause for the purpose of not having to pause, I don't think that's a meaningful way to move forward.

So I agree with your proposal in the way that we should basically brainstorm and find out what additional topics can we still work on without having the data that we need for most of the work that's laying ahead of us. By all means, use the time that we have to do that work, but also at the same time, be conscient of the value of the time of every one of our members and only use the time that we can spend in a meaningful way. So it's not that we would say we want to pause, but rather let's move ahead if we have something to move ahead with.

MICHAEL PALAGE: Thank you, Volker. Next in the queue, Beth.

BETH BACON: Thanks. I wanted to just pull it back to Lori's suggestion that I thought it was very constructive. I like the idea of a recommendation saying we can't complete our assignment basically because we need more data. So let's ask for more data and figure out ways to do that, and then close this effort out and we can restart when we have something to do. I think that staying open to stay open without an actual task. Because I don't think we're going to find that data as this group, unless we embrace the idea of the registrar survey that we've proposed a while back, which I think still has merit. But I think unless we're going to do that data gathering, which seems from our previous discussion is not something that we are operationally able to do, then let's make the recommendation that we need that data and move along and get something constructive out of this as Lori suggested. Thanks.

MICHAEL PALAGE: Sophie?

SOPHIE HEY: Thanks, Mike. I just want to agree with everything that Beth said and also with what Lori was saying before about the survey for the registrars. Again, it's not as though we don't have some drafts surveys that we can put out and get data from the registrars. I feel like a broken record a while ago. I put out a draft survey where we could look at how do the registrars implement the accuracy obligations. And I put that on the list following a call about a month ago. We have the one that we did in the small group. So it's not as though we don't have some options to consider for how to get data. We actually have a few and it's about finding that information and bringing it forward in a useful way. So we can go back to what the actual purpose of this scoping team was, which is to identify what is the current status quo of accuracy obligations for gTLDs.

MICHAEL PALAGE: You're special. You go to the top and you're the only one there. We have a time check at 20 minutes left.

MARIKA KONINGS: Thanks, Michael. I just wanted to flag as well. And of course, that may be something that will come out of the poll. I think Laureen made a specific proposal as well during the last meeting that we had actually assigned an action item on to get those as well as some more details on what that could look like. So that might be something else that may materialize as a result of the poll asking

people indeed whether to pause or continue work. And then if to continue work, to be specific about what that would look like.

MICHAEL PALAGE: What I'd like to do is—mindful that we have 18 minutes left—I do want to return back to—can we have the agenda, Marika? There we go. Thank you. EPDP, the outreach. As far as the brief recap, I think we've done a pretty good job explaining the interrelationships between Assignments 1 and 2. Perhaps at this point in time, one of the things … Do you want to go through this, Marika? Okay. What we have here is basically a brief recap of the work that we've been doing. As I said, we've started off with the enforcement and reporting definition, the accuracy requirements, which was the gap analysis. And as people that have been listening in here have heard, this has been challenging, but I think we are at a point where we hopefully can be wrapping up and reporting back to Council on those first two particular items.

What I'd like to do now is, again, just mindful of time, really go to the outreach that ICANN has engaged in with the European Data Protection Board. And for that, I believe—who do we have? Becky, you'd like to speak? Thank you.

BECKY BURR: Am I willing to speak? Yes. Greetings, everybody. I think you have seen that ICANN has sent a letter to the European Commission noting that requesting information about its willingness to assist in outreach to the European Data Protection Board. Meanwhile, ICANN is preparing a very specific scenario with details about the options there, also preparing a Data Protection Impact Assessment and a documentation of the balancing test interest. So that when the Commission responds, they're prepared to move forward, hopefully with the assistance and facilitation, at least, of the European Commission, if not, a formal request under Article 64 of GDPR. If not, ICANN can submit the request to the European Data Protection Board, but there's definitely no guarantee that we'll get a response. So the request for assistance has gone forward and ICANN is meanwhile preparing all of the detailed backup documentation that would be needed to make the request to the European Data Protection Board actionable.

MICHAEL PALAGE: Thank you, Becky. Do you have an ETA on when those particular components, the DPIA, the specific scenarios, when those will be available?

BECKY BURR: I think that they will be available as soon as—I mean, I think that they're underway and shouldn't take that much time. I don't

think that they would hold up any outreach following a response from the Commission.

MICHAEL PALAGE: Another quick question, Becky. And for the benefit of those that are listening in, there were four specific scenarios that were put forth by ICANN to look at. I believe that we were most focused on scenario two, if that was correct. Is that this scenario that the DPIA is currently being prepared for?

BECKY BURR: Well, I believe scenario two, if I'm understanding correctly, was a survey across the full dataset and registrars. And that is obviously the scenario that would have done most significant data protection implications. So I think that the DPIA needs to be written to that scenario, but everything backing off can be analyzed in that.

MICHAEL PALAGE: As you will recall, we were talking about how they potentially test a subset of data. Instead of the entire 170 million gTLDs, a subset of what may appear in DAAR. Right now, is the only option ICANN is looking at right now for their DPIA is a full subset of the—

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BECKY BURR: No. ICANN is looking at all of the scenarios that were on that list.

MICHAEL PALAGE: Okay. I guess my next question to you before we wrap up, as far as work that we can do, is if this group feels that there may be other scenarios that have not yet been identified, is it too late or is there still time to put forward more scenarios or consideration or evaluation by ICANN Org?

BECKY BURR: Good thinking as always and creative approach will always be welcome.

MICHAEL PALAGE: Thank you, Becky. I think we're done. Do you have any—there we go. Thank you very much. What happens is we have 12 minutes left. At this point in time, if there is anyone online or in person that has a question, we welcome your question at this point in time.

MARIKA KONINGS: If no one is raising their hands at this point, maybe we can just recap, I think, what the action items are, I understand, for staff to set up a poll. So to ask the question pause or not pause. And the not pause option with specific suggestions on what work would need to be undertaken. I think we've agreed to at least

resolve the comments of the document for now with offering Melina and the GAC the option to come back if they have further support for their suggestions or a potential alternative if that is reached in further conversations.

I think the last remaining item that we may want to discuss is next meeting. Because, of course, I think the text is more or less in a final state, but of course, depending on the outcome of the poll, there may still need to be updates made. I think the question is we should be able to get the poll out probably later this week. How much time does everyone need to fill that out? Specifically, I think, asking those that may want to think about proposals for what can be done. Factoring in, of course, as well, ICANN travel. I'm seeing what would make then make sense to schedule the next meeting. Because I guess if there is indeed substantive input on the poll, groups may also need an opportunity to review those proposals before we come back with the hope of then finalizing the write-up with either leaving the report as is or by adding or considering those additional proposals for further work.

MICHAEL PALAGE: So you're saying that we should be able to get that survey out by the end of this week. I think the standard practice has always been to take a pause after an ICANN meeting. So I believe it would be—let me pull up my calendar. We would probably meet

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the week of the 27th? Actually, the 30th would be our standard meeting. Is that what you're proposing?

MARIKA KONINGS: I'm not proposing anything at this point. I'm asking the group. I myself will not be there on the 30th to support you, but I'm sure Caitlin and Berry will be available. But that's, I think, really up to the group factoring in how much time you need to complete the survey. Travel maybe planned after the meeting. So it's really up to the group to decide. Normal time would indeed restart the 30th or the week after aligning with normal schedule.

MICHAEL PALAGE: Perhaps we include that in the survey when they want to restart. There we go. Democracy at its best. Okay.

MARIKA KONINGS: Sorry for taking the floor again. There's actually a question in the chat, but actually, I think I see Alex sitting here, so he may actually want to ask the question himself.

ALEX DEACON: Yes. I was hoping to sneak by without it. I'm a lurker so this question could be pretty much context-free. But when is ICANN Org going to consult with the European Data Protection Board? It's described/requested in the first bullet on slide seven. It

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wasn't clear to me when that would happen. You guys spent the last 20 minutes talking about the need for data. It seems pretty important that this happen sooner rather than later.

BECKY BURR: ICANN has, as I said, reached out to the European Commission for an indication of whether it would facilitate that outreach to the European Data Protection Board. The answer to that does have implications—potentially has implications for whether the European Data Protection Board, for example, would be required to respond. So it's our judgment that waiting for a response to the letter from ICANN to the European Commission is appropriate and will facilitate getting guidance in the end. I don't know what the answer to that question is because I'm not remotely certain when or whether we will get a response from the Commission.

MICHAEL PALAGE: Thank you, Becky. Any other questions? Seeing none, I will propose that we end the meeting and give everyone seven minutes back on their day. Any objections? The meeting is closed. Thank you, everyone.

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DEVAN REED: Thank you all for joining. Once again, this meeting is adjourned. I hope you all have a wonderful rest of your day. Please end the recording.

[END OF TRANSCRIPTION]

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