
ICANN86 Seville | PF – GNSO: SSAD Supplemental Recommendations Session (2 of 3)
Wednesday, June 10, 2026 – 11:45 to 13:15 CEST

TERRI AGNEW

Hello and welcome to the SSAD Supplemental Recommendation Session 2 of 3. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior, the ICANN Community Anti-Harassment Policy, and the ICANN Community Participant Code of Conduct concerning Statements of Interest.

Please observe the following guidelines to participate in this session. I will also post them in chat for your reference. Only questions posted in the Zoom chat identified as a question will be read aloud during the session, as time permits, and when directed by the chair of the session. If you wish to speak, please raise your hand in Zoom or otherwise as directed. When speaking, please state your name for the record and speak clearly at a moderate pace. I will now hand the floor over to Marc Anderson. Please begin.

MARC ANDERSON

Thank you. This is Marc Anderson. And welcome everybody to the second of three meetings of the SSAD SRT. This is a working meeting of the Supplemental Recommendations Team. So, welcome to all the observers that we have in the room here, but

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file but should not be treated as an authoritative record.

please note that participation in this meeting is for members of the Supplemental Recommendation Teams.

We will not be taking comments from people not on the SRT. As this is our second of third meetings, I also won't be providing a summary or overview of the SSAD and the SRT. Andrew, if you could drop a link in chat. If you are interested in learning more, Andrew's providing a link to our assignment form, which is essentially the charter for our effort.

It provides links and information for this group, and if you want any additional information, context or background, you can find it there. Before we get to our agenda and the heart of what we're going to be working on today, a couple housekeeping items. First off, I've been following along the discussion on the mailing list very closely, and thank you to everybody that's participated in that discussion.

You've heard me say a couple times that we have a very aggressive timeline, and if we are just working during these meetings, we're not going to meet that timeline. In order to meet our aggressive timeline goals, we're going to have to get work done on the mailing list and in the Google Docs. And so, I'm very happy to see people actively engaged on the mailing list. If you're not already engaged, I encourage you to follow along the discussion and contribute as you see fit.

But thank you for everybody that's participating there. And please don't be shy about joining those discussions. Another quick

housekeeping item. I've got some feedback following the last meeting about people jumping the queue and a little bit me calling people out of order in the queue. So, for my part in that, I apologize. I'll be a little more stringent moving forward about people following the queue.

We have a large group, I think we have something like 38 people in this group, and so, given the number of people, we really need to stick with the queue. And along those lines, if we could avoid during interventions calling people out specifically, if you have maybe questions about constituency, if you can ask a particular constituency, maybe the data controllers to contribute on a topic, but maybe not calling out a specific data controller, that would help our discussion move forward in a more friendly and cordial manner.

So, thank you for bearing with me for those housekeeping items. Why don't we go ahead and jump to the agenda. All right. So, for today, I think if at this point, everybody knows that we're going to focus today's discussion on Recommendation 8, which is Contracted Party authorization. We're going to dedicate the whole session to that. If we agree in the first 15 minutes, we can end early. But that's okay if we need more time than that.

And as always, this won't be the final opportunity to discuss Contracted Party authorization. Obviously, as one of the recommendations called out as a high level of effort to modify based on the learnings from the RDRS, we appreciate that there

may be a lot of time needed for discussion and analyzing this recommendation, but we're going to take advantage of this face-to-face time to try and cover that to the extent we can. So, we're going to have that discussion today.

We're going to go through some of our usual principles. And in working with staff and based on our experiences with previous sessions, we thought it'd be useful to put a flowchart together, basically displaying the steps that a basic Contracted Party authorization process would go through. And I think maybe we had some suggestions for that on Monday's session. So, thank you for everyone who contributed to that.

So, we're going to give that a try. And I think we're going to also try and take a page out of David Plum's playbook and start off our discussion on principles, see if we're aligned on the overall principles of Contracted Party authorization. And if time permits, we'll get into the actual language itself. So, let me just pause there for a moment. I see we have a question from Murray. Murray, please go ahead.

MURRAY MCKERCHER

Yes, just a matter of information. I was expecting Alan to be on the call. I don't see him here yet, but just to let everyone know I'm sitting here listening intently. Thank you.

MARC ANDERSON

Thank you, Murray. I appreciate your attendance, and I understand that the time zone is less than ideal. So, thank you for bearing with us in your continued online support. Anything else before we continue? All right. Go ahead and go to the next slide, please. Hopefully, we have another hand in the room. Sorry, didn't see you there, Justine. Go ahead.

JUSTINE CHEW

No worries, Marc. Thanks. This is Justine. You were talking about principles, right? So, in the recommendations one and two, whether we collapse it together or not, we were talking about perhaps using the term responders to include ccTLDs. In this situation, I don't know how that's going to plan out because they're talking about obligations of agreements. But I just want to note that I guess we have to figure out a way to include ccTLDs in their registrars as well. Thanks.

MARC ANDERSON

Thanks, Justine. 100% agree, we're going to have to have that conversation at some point. One of the recommendations from the RDRS is that we consider ccTLD operators. We have not yet figured out when we're going to have that conversation. Keep in mind, we will have to have that conversation for now. I'll ask everybody to just stick with the Contracted Party language, and we can have that conversation later on down the road. Thomas, go ahead.

THOMAS RICKERT

It's sort of in the same vein. Data controllers, I think we should change the language that we've been using in other places of data owners, I think, we said somewhere else, because a lot of ccTLDs use their registrars as processors. So, the registrar participating in such regime would not necessarily be a data controller.

MARC ANDERSON

Thanks, Tomas. Fair enough. Maybe I'll just take a step back and maybe from a thousand-foot view here. It seems to me that in some cases, we, the sort of big we, are using some terms slightly differently, and it's leading to us talking past each other a little bit. So, I think working with staff, we've identified that as a concern.

And so, we're going to work on putting together a glossary of terms that we'll put on top of the straw man to try and get us all on the same page as far as how we're using terms. So, I think your point is well made, but I think that's part of a bigger issue that we're going to need to address to make sure everybody's using the same terms in the same way. So, thank you for that.

In the meantime, everybody is hopefully familiar with the slide at this point, but I'm going to keep beating this drum. High-level principles to keep in mind as we're developing these recommendations. We need to make sure that we're proposing recommendations that balance the needs of the data controllers, with apologies to Thomas on the use of that term, requesters and data subjects.

At the end of the day, our policy recommendations need to work for all those groups. If it doesn't, we're not doing our jobs. We also have to make sure they're implementable. Again, you've heard me say this, but I'll say it again, the shortcomings of the SSAD at the end of the day were that they were not implementable. The original SSAD recommendations, for various reasons, suffered from a lack of implementability.

And so, as we're looking at refining those recommendations, let's keep in mind, is what we're putting on paper implementable? When we put language in the recommendations, what is our implementation intent? So, let's make sure we're being clear and keep in mind implementation. And then the last one, again, you've heard me talk about this one, but I'll say it again, is our recommendations board ready? Are they GNSO Council ready?

Are we producing recommendations that are going to be acceptable and viable for the GNSO of Council and the Board to approve. I love this slide. I'm going to ask staff to keep putting it up here to remind us all of what our tasks in the supplemental recommendation team are. So, hopefully, you don't get too sick of me saying this, but I think it's important to remind everybody what our job is. Next slide.

All right. With that, I'm going to stop talking for a little bit. I'm going to ask staff to give us a little bit of an overview of the high-level principles that they saw when they were putting together the straw man and evaluating the recommendations from the RDRS standing

committee when it comes to contract party authentication or authorization. So, over to you, Andrew.

ANDREW CHEN

Thank you, Marc. So, on the screen here -- oh, it's Andrew for the record. So, on the screen here, we have the overarching principles that were just mentioned. So, starting with the first one, we noted that Contracted Parties must evaluate disclosure requests in accordance with their local laws. The SSAD recommendations cannot impede that.

As we've also talked about previously, Contracted Parties have the ultimate decision-making authority as to whether to disclose data or not. The second principle that we have here is that the RDRS was a voluntary pilot. It still is currently a voluntary pilot.

While the SSAD, including any updates that are made as a result of this SRT, will become mandatory due to it becoming consensus policy recommendations. And that would take place in implementation later down the road. The third principle is that REC 8, in reviewing this, was a bit prescriptive when it came to GDPR.

So, generally speaking, updates were made to avoid enshrining a specific law into ICANN policy. And the fourth overarching principle falls into that, right? Not all requests fall under GDPR. And so, modifications to Recommendation 8 have been updated based on

these overarching principles. With that, I'll pass it back to you, Marc.

MARC ANDERSON

Thanks, Andrew. Mark Anderson. I think in my review of the RDRS recommendations and how they impact Recommendation 8, that last point about GDPR and REC 8 being too GDPR specific was the most impactful. I was actually surprised at how much in REC 8 was GDPR specific.

And I do remember that we had a lot of feedback during the RDRS pilot about how the request process included language specific to GDPR, where in some cases it didn't apply. And that caused confusion for requesters and was maybe a little bit too prescriptive for the data controllers.

So, I think those changes are maybe the most significant, at least in my review of the straw man. Anyone want to comment on this before we move on? All right. And for Murray, I'll, a quick note that Alan Greenberg is walking in the room now, but I see you have your hand, so go ahead.

MURRAY MCKERCHER

Yes, just a quick question on the RDRS. Do we have any statistics on how many registrars actually participated in the pilot?

MARC ANDERSON

Thanks, Murray. We absolutely do. There are statistics posted regularly, and I have Lisa Carter sitting right next to me. I'll ask Lisa if she could just link that in chat. But yes, we do have statistics that are available for that. Owen.

OWEN SMIGELSKI

Thanks, Marc. Owen Smigelski, NEP Registrar. I know we're talking about, oh, let's remove the GDP references to the GDPR, but I do want to highlight in the chat, as well as registrar practices, there are a number of us who, that is what we implement across our entire spectrum. It is a gold standard. It's a good place to start. So, I hope that we just don't get away from the, oh, well, the GDPR doesn't apply.

I want to make sure that that is crystal clear because there are a number of us who, every single request, there are many situations where the GDPR applies when it may not even appear that it could from all sorts of complexities and things that go on there. So, I just want to make sure that just because the references are being wrote, it's not being gotten rid of or not considered. Thank you.

MARC ANDERSON

Thanks, Owen. Sarah, over to you.

SARAH WYLD

Thank you. This is Sarah Wyld, also registrar. In the RDRS Standing Committee Findings Report, there was mention of a couple other items that the SSAD expected to have, but RDRS did not. So, I just

want to understand, is that part of what we're going to talk about today? It was pretty simple items. It was just bulk request and re-examination requests. And so, maybe those should be included in this one as well. Thank you.

MARC ANDERSON

Thanks, Sarah. I think your question is, will these be and should they be included? And I think absolutely they're fair game. I think that's part of our task is to decide that. So, I think the answer to your question is yes. All right. Thank you for that.

If we could go on to the next slide. All right. And hopefully everybody can read that if you're in the room or online. But this is a flowchart that staff put together based on leadership's understanding of the basic flow that a Contracted Party authorization went through or needs to go through.

And what I want to do first is just walk through this and make sure we're all on the same page. And if we're not, let's figure out where and why. So, this flow starts with Contracted Party receives an SSAD request. And here I'll note there's nothing here about the content of the request whether the requester is authenticated or not.

So, nothing in this recommendation deals with either of those items This is specific to what a Contracted Party must do for considering and authorizing or denying a SSAD request. So, in the next step, the contract evaluator or the contract party evaluates

the SSAD request in accordance with applicable law and considers the rights of the data subject. And so, two key pieces here I think that apply.

We're recognizing that Contracted Parties need to take into account whatever laws apply in their particular jurisdiction and in the situation of this request. I think Owen made a reference to the fact that it's a little complicated when you're dealing with cross-jurisdictional issues. And so, it's up to the Contracted Party to navigate that particular piece and take into account applicable law.

And the other piece we're making sure is incorporated here is that in evaluating the disclosure request, the Contracted Party must take into account the rights of the data subject. And here we're trying to be a little bit broad, but we've heard quite a bit about human rights impacts assessment and the human rights of the data subject. We're trying to broadly take that into account here in this bullet point and specifically call out that that needs to be taken into account as part of the evaluation.

In the next step, the Contracted Party determines if it can lawfully disclose the requested data. And the path splits after that. So, in the green path, if yes, the Contracted Party must disclose the data and provide a rationale for the disclosure. And then if no, the Contracted Party must provide rationale for why it cannot provide the requested data.

And I'll note that the language here that follows is pulled directly from the registration data policy section 10.6.2. And so, what staff

did here is align the language directly with the obligations that currently exist under the registration data policy. And I'll just suggest that as a principle, we should try and match the registration data policy unless we have a really good reason not to.

So, this is sort of our attempt to big picture capture the basic flow of what happens as part of a Contracted Party authorization. And again, taking a page out of David Plum's book, we're trying to make sure the group is aligned on the overall principles of what is involved in Contracted Party authorization.

So, I'll pause there. If anybody has reactions, comments, now's the time. If there's something you strongly support or strongly disagree with, please let us know. Sarah, over to you.

SARAH WYLD

Thank you. This is Sarah from the registrars. I am noticing a change that I don't yet have an opinion on, but I want to note. The Contracted Party must disclose the data and provide the rationale for disclosure. That's different. The original SSAD recommendation 8.9.1 said it must document the rationale for its approval.

So, that's not the same as providing it. And the registration data policy just says must either provide the requested data or provide the rationale for why they cannot. So, that would be a change that I would like to flag for further consideration. Thank you.

MARC ANDERSON

Thanks, Sarah. I'll just respond to that real quick. I agree with your recollection. I think you're correct and we might be misspeaking on the slide a little bit. Yeah, I think our intent is looking for -- did you want to jump in? I don't think our intent is to create or suggest a new obligation to disclose the rationale to the requester. But I think Feodora will jump in.

FEODORA HAMZA

Hi, this is Feodora from ICANN Org, So, this is just a flow chart of how this recommendation could look like in action. This is not necessarily the language one-to-one that is in the straw. Proposal, however, based on the discussion with leadership, this is kind of just to take out the essence of where this recommendation is going to see if everybody agrees on the flow and if something needs to change.

As Sarah suggested, that can be definitely uh taken on board and reflected as such however the actual language um on how this would look like will be in this straw proposal. Thank you.

MARC ANDERSON

Thank, Feodora. And just to reiterate what she said, this is just intended to facilitate discussion and dialogue, so we're not proposing a change there. So, I don't know how to pronounce Maciek.

MACIEK PIASECKI

Maciek Piasecki here. I'm a fellow observer with this PDP and also with EURALO. To follow up on your question a bit, I understand you don't want to provide the rationale before the decision, but will the end user business or an individual be informed that such request was --

MARC ANDERSON

I'm sorry. Excuse me. You're an observer of the group. I'm sorry. This is a working session. All right. Sorry. Apologies for that. So, I'll just read it. We're limiting active participation in this group just to SRT members. So, apologies for that. Anne, you're next. Please go ahead.

TERRI AGNEW

Anne, mute your --

ANNE AIKMAN-SCALESE

I'm sorry. Okay. I might be a little slow on the uptake on this. It really is following up on what Owen said about the standard that is used across the board and applying a balancing test. And I just want a clarification on -- There's nothing in what we're saying in recommendation eight that would prevent a registrar from applying a balancing test? Is there, I mean, across the board?

MARC ANDERSON

Thanks, Anne. So, let me make sure I understand the question. So, I think you're asking is, are we proposing anything, any language

that would prevent a registrar from proposing, from performing a balancing test and applying the principles of GDPR?

ANNE AIKMAN-SCALESE

Right.

MARC ANDERSON

Okay. So, absolutely not. That's not what we intended by this language or proposal. I think to Owen's point, GDPR provides for many people best practices and principles that I recognize that many registrars are applying today. This language is meant to facilitate that without being prescriptive as to saying that they must do that, but not prevent them from being able to do that if that's how they want to proceed.

ANNE AIKMAN-SCALESE

Yeah, I think that's good to know, that they wouldn't be prevented from applying a balancing test. And I think that our human rights core value, a framework of interpretation, does speak to that as well, even in situations where some local law might not require any sort of balancing tests. That high standard of balancing seems appropriate. Thanks.

MARC ANDERSON

Great. Thank you. Steve, over to you.

STEVE CROCKER

Thank you very much, Steve Crocker, for the record. We've said many, many times that the data holder, the registrar, has the ultimate authority to grant or not grant access so that it's their decision, and the reference to balancing tests and so forth. In the extreme, I don't see anything that prevents a registrar from deciding what they want the answer to be and making up the rationale afterwards and in particular saying, sorry, we're not granting you access.

And in our judgment, this does not pass our criteria for in the balancing test. End of story. No appeal because it's our decision. Go away. And that would be consistent with the wording that's here, but probably inconsistent with what the intended effect is. And so, that's something to take into account at the time that we're trying to flesh out. what this language is and so forth. One of the experiences of dealing with RDRS is a lack of consistency and a lack of clarity.

There's no imposition of consistency across registrars and no imposition of consistency from one request to another, even with the same registrar, and no clarity as to what that criteria is that they're going to use other than the covering language of balancing test and judgment and so forth, but without an appeal process, without an external adjudication of whether or not the decisions that the registrar has made fit into the intended behavior, this language is weak in that sense.

MARC ANDERSON

Thanks, Steve. All fair points. Just a reminder, we're more principal level rather than nuts and bolts of the language itself, but fair points. Thank you. Volker, over to you.

VOLKER GREIMANN

Yes, thank you. Volker, registrars. Flowchart looks good to me just one question because was a bit puzzling when I looked at it. If yes, we must also provide a rational rationale for disclosure and in my book the only rationale that needs to be provided here is there was no reason to deny, which is probably going to be the same for every disclosure. So, I don't think that this need for a rationale in the yes column is required and could be removed.

MARC ANDERSON

Thanks Volker. Sarah noted the same earlier. I think you're both correct. I think that may was maybe miss typing when the slide was put together. I apologize for that, I don't think we're intending to imply a new requirement to provide the disclosure rationale to the requester. Becky.

BECKY BURR

This is just an initial observation. In addition to what Volker and Sarah pointed out about the requirement to provide an explanation as opposed to document an explanation for their decision, I think there are a bunch of things in here that create rights that don't exist under applicable data protection law.

So, I don't understand, for example, why we are prohibiting responders from basically deciding that a certain kind of category of request they are going to grant, as opposed to the individual review. I understand that saying we will never grant this kind of request and applying that may not be the provision of reasonable access.

But I'm just concerned that there are a bunch of things in here that go beyond what is required by applicable law and create some liability, like the requirement to disclose the reason that you're disclosing. As a lawyer, I would strongly discourage my clients from articulating why they made a disclosure unless someone asked them for that reason.

MARC ANDERSON

Thanks, Becky. Let me just respond a little bit by saying our intent was to minimize that concern as much as possible. So, I'm concerned that we maybe didn't hit the mark. So, our intent in taking this up a level and talking principle was to remove extraneous obligations to laws that might not apply, specifically the GDPR in all circumstances, and leave flexibility to the individual data controller, the Contracted Party, to make those disclosure decisions based on the applicable law that applies in that particular disclosure request circumstance.

So, I'll say our intent was to minimize your concern to the extent we didn't hit the mark. I'll look forward to the next discussion when we get to the actual language. But from a principal's perspective, I

think we're in strong agreement. I think, Volker, that's an old hand. And Justine is next in the queue.

JUSTINE CHEW

Thanks, Marc. This is Justine. I think to a certain extent, I agree with Becky. I think probably the rationale would be useful if there was an appeal mechanism, because then the appellant, whoever they may be, would understand why the request was rejected in order to mount a proper appeal. That said, I'm just going to go back to a little bit of what Steve was saying and extend it to just one particular area, and this may be an extension of this flowchart.

I want to kind of understand what the use of this, whatever that's being documented, would be. And the reason why I'm asking is, this ties back to the accreditation, I want to say, of a requester. I'm trying to figure out whether there's a way for outcomes on either side, whether it's a yes or no, but pertaining just to the identity of the requester.

If, for example, a requester claims to be a law enforcement personnel but does not fall under DUG, but one of the registrar that responds to this request determines that, yes, this person is a legitimate law enforcement person, could that bit of information be shared with the other registrars so that they use that as a data point as well to not just -- they may choose not to use a data point but the data point is available for them to authenticate the person. Thank you.

MARC ANDERSON

Thanks, Justine. I think the intent is for this flow to be specific to Contracted Party authorization and agnostic to whether the requester is authenticated or not. I think the idea is for this to be very request agnostic. It should work in all circumstances. I think you're suggesting a way to share information between registrars, which I hesitate to speak for registrars, but I would postulate that that would be a very difficult proposition at best and probably outside of our scope. But if you want to talk more about that offline, I'd be happy to. Gaurav.

GUARAV VEDI

Hi, this is Gaurav, GNSO and NomCom. My observation is also an extension of what Steve said earlier, and I've just seen you're not alone. Thanks, Lisa, for sharing the document on chat here. This is for the RDRS two-year pilot summary. So, I just quickly glanced through it. And my question is related to the red highlighted section over here.

And quickly glancing through the RDRS summary report, it seems there is no data set around specific error codes which the registrars can use or should be used as like response codes when rejecting corresponding requests. So, my suggestion would be because each registrar could reject these requests based on a number of reasons, right?

It could be insufficient documentation, not aligning with the policy or not with the jurisdiction or something else, which doesn't apply. So, maybe having that a unified you a set of standardized codes error codes among the registrars or in general with Contracted Party Houses. So, that is something that can be applicable here or applied here and may be very useful for the RDRS or SSAD in general. So, that's all.

MARC ANDERSON

Thanks, Guarav. I'm concerned that your suggestion is getting into the weeds of implementation. I think that's probably outside of the scope of what we should get to in from a policy perspective. And certainly, too much detail for a high-level concept diagram. I'd also maybe point you to the RDRS findings report.

And I think one of the challenges in the RDRS findings report is that registrars had just a drop-down list of limited options that they could select when it came to rejecting requests. And I think you would find in the findings report that that was problematic and that it did not provide sufficient information to the requesters that they could clearly understand the reason for the request.

So, again, at risk of being way too far in the weeds here, I'm going to push back on that. I think that's an implementation discussion, but I also think having a limited set of error codes is counter to the experiences of RDRS. John.

JOHN MCELWAIN

Thanks, Marc. I think that there's been some discussion about sort of the test that a registrar would apply to make a disclosure. And while we're talking about getting to like principles here, I think I'm correct when reading through the document that there is no now. test that is provided. So, it is literally up to the registrar's discretion, applying the applicable laws and consensus policies, essentially, to make that determination.

I think that's going to be a crucial understanding that we all need to have here to move forward. I want to actually make sure I'm correct, but I've studied recommendation eight pretty thoroughly. And I think that's the case. But just wanted to kind of get that out there on the table so we don't go spinning off in different directions. Thanks.

MARC ANDERSON

Thanks, John. I appreciate that and when we get to the actual language, look forward to getting into that discussion and more specifics. Thank you. And before I go to Anne, let me just note, staff has updated the green if yes slide to note Contracted Parties must disclose the data and document the rationale for disclosure, which I think is what we originally intended. And my apologies for the confusion there. So, Anne, over to you.

ANNE AIKMAN-SCALESE

Thank you. It's Anne, NonCom, non-voting councilor. And on the topic of providing the rationale, I do recall in one specific instance

that the reconvened IRT recommended and put out for public comment that where the registrar denies on the grounds of jurisdiction, that the registrar would so inform the requester.

And so, they put that out and I think they got positive public comment on it. And so, on the question of jurisdiction, that might be a bit of an exception in terms of our ICANN process. Becky raised the question, can there be anything in policy that goes beyond what is required by data protection laws.

So, I raised that example because in the community, it was drafted by the reconvened IRT and positive public comment was received on the notion that if the registrar denies for lack of jurisdiction, that it should inform the requester. So, that's just something maybe staff could look up for us.

MARC ANDERSON

Thanks, Anne. Reconvened IRT is PPSAI you're referring to?

ANNE AIKMAN-SCALESE

No, it was on urgent requests, I think, at timelines. It was nothing on PPSAI, nothing on that. It was, help me staff, it was the reconvened IRT to address timelines, and this came out in their report and public comment was received, and it was stated that if jurisdiction was the reason for denial, that the requester should be informed. Maybe staff can track that down. I mean, if I'm nuts, I'm nuts, but I have a distinct recollection about it.

MARC ANDERSON

Thanks, Anne. Let me just ask, so that IRT you're referring to, was the registration data policy IRT. And this is the language up there is the final language from the registration data IRT. And it incorporates the language, including a clear explanation of how it arrived at its decision that is sufficient for a requester to objectively understand the reasons for the decision. So, we've taken the language directly from you the final report for registration data policy.

ANNE AIKMAN-SCALESE

I was speaking to the comments in the room that there should only be a requirement to document and not to share the reason. And I believe that in the policy work or the IRT work, I guess technically, that the issue of jurisdiction was listed as one that need not just be documented, but that it be shared with the requester.

MARC ANDERSON

Got it. Thank you. Apologies, my misunderstanding. So, to clarify the nuance we're trying to capture here is that if the decision is made to disclose the data, you don't need to share the rationale with the requester. If the decision is made not to disclose the data, then you do need to provide a clear explanation of how you came to the decision not to disclose the data. And that's consistent with the final findings of the registration data policy that's in effect. Does that help?

ANNE AIKMAN-SCALESE

So, what you're saying is that what this means is that if the answer is no, the rationale will always be disclosed to the requester? Okay, thanks.

MARC ANDERSON

Thank you. Alan, welcome.

ALAN GREENBERG

Thank you. My apologies for not being here all the rest of the time and including being late. In terms of the quote drop-down list for rationales, it's clear the one in the RDS was not sufficient. There may be better ways to do that, including one that evolves over time.

If we don't at least mention the possibility, the IRT will not really be able to discuss it. So, I think we should say that we should consider ways of making it easy to disclose the rationale but not be specific, obviously, at our point, but if we don't mention it, the IRT is going to say it's not written in the policy, we can't do anything about it. Thank you.

MARC ANDNERSON

Thanks, Alan. Farzaneh.

FARZANEH BADIEI

So I think, if I'm not mistaken, I worked on this paragraph with John. Is John here? Yes. And first of all, yes, of course, we don't want to be prescriptive about human rights impact assessment or fundamental rights balancing because we don't want to like prescribe what sort of steps we can provide guidelines, but that's something that can be done outside of ICANN for the registrar to consider when they are doing their fundamental rights balancing.

But we want to ensure that the registrar does some kind of fundamental rights balancing when deciding and when evaluating the requests. So, documenting the rationale, especially analysis and explanation of how fundamental rights and freedoms of the data subjects were weighed against the legitimate interest is important for us.

That's the reason that we thought that it would be good to you have a language like this. And if the group wants us to be prescriptive about how to do like human rights impact assessment or fundamental rights balancing, and we have to pick a term and stick with it, then we have to go back and think about like criteria for fundamental rights balancing.

But I don't think we should go there. I think we should just have a simple language that says the registrar should do fundamental risk balancing. And I'm sorry, I don't know where to raise this. So, do we have, at some point during the process, you notify the domain name registrant of the request? Is that in the registration policy?

MARC ANDERSON

Thanks, Farzaneh. My recollection, and I may be incorrect on this one, but my recollection is that that is not a must anywhere in the current language. And just responding to your earlier comments, I think we're in alignment. I think what we're trying to accomplish here is to set the minimum policy standards that must apply in all circumstances while at the same time ensuring that the data controllers have sufficient flexibility to apply whatever legal obligations they have that apply in that particular disclosure request.

So, while we are establishing minimum policy standards, we also need to be fully cognizant of the fact that registrars and registries deal in a global environment and have different jurisdictions and laws to balance. All right. This has been an excellent discussion on the flowchart. Thank you, everybody. A quick time check. We have 40 minutes.

All right. I did my math right. We have 40 minutes remaining in this time slot. And so, what we're going to move to is we're going to put new straw man policy language up on the screen. And this makes me nervous because I have not shared it with the group yet.

So, this is new language that I'm asking you to react to without having seen it first. I'll give us a little bit of a walk-through while staff's pulling that up. I'll also say We've had great participation in the existing straw person document to date. So, a lot of people

have put in comments. Again, thank you for that. I've encouraged participation in the document.

We're not going to meet our timelines if we don't have active participation and contributions in the Google documents as well as on the list. So, the contributions we've had so far have been great. Maybe an ask. As you're commenting in the documents, to the extent possible, if you could suggest new language, that would be helpful.

I know that's a little bit difficult to suggest new language at this point when we're not necessarily aligned on what the language should say. So, I know we're that's putting the cart before the horse a little bit and that we need to be aligned on what our principles are before we get to the actual language.

But just in general, to the extent you can provide feedback in the form of edits and suggestions that is helpful particularly for staff as they're trying to turn new versions of the draft policy language. So, are we ready? All right, drum roll. All right. So, again, based on discussions we've had so far and the comments that we've received, we took a crack at a new straw person document, and again, I'm holding my breath here because I did not share this with anybody ahead of time, and I know that's a little bit risky.

But you can see here, staff has called out where the language is unchanged from the previous, the SSAD recommendations. Slight modification to this introductory text, the SSAD recommendation

referenced policy recommendations because the registration data policy is now published.

Those have simply been updated to refer to the live registration data policy language rather than the previous policy recommendations. Getting down into the actual recommendations themselves, 8.1 must review every request individually, no bulk. Sarah, maybe a call back to your previous concern. As well as the language allowing or making it clear that the Contracted Party may use third parties. If we continue to scroll down here.

All right, so this first one, 8.3, that maps to our first box in the flow chart. Must review the request, determine if it can lawfully disclose the requested data, and must consider impact of human rights on the data subject. So, here we're trying to map directly back to the flowchart that we just reviewed. Steve, do you want to jump in now or hold fire until the end?

STEVE CROCKER

Steve Crocker. I was just thinking about this must review individual request, not in bulk. How could you know?

MARC ANDERSON

I'm not even going to attempt to answer that because I've never been on the requester side, but maybe a fair question. And I'll also, along those lines, maybe a question for the data controllers is I'll ask you, do you need that spelled out in policy language or is the

fact that you already have an obligation to comply with applicable law sufficient? So, maybe some fruitful thought there, but I don't think I'm qualified to answer Steve's question. Continuing on, Volker, do you want to jump in?

VOLKER GREIMANN

Yeah, and I understand the reasoning behind 8.1, but I think that it still should probably be removed. It basically tells us how we have to do these things in detail and there may be reasons why we feel comfortable in taking on the legal risk of doing those in bulk, at least in certain circumstances. I feel uncomfortable of ICANN policy telling us how we have to do things, not what we have to do. While that is a legal risk in certain circumstances, I think that it's manageable in others.

MARC ANDERSON

Thanks, Volker. I appreciate that. Honestly, I sort of had the same question myself. So, I think once I encourage you to put that into the Google document, provide that feedback in the Google document directly once we make it available to the group.

All right. 8.3, again, this gets to the direct yes side of the flowchart. And this is maybe the meat of section or Recommendation 8, the Contracted Party must review the request. Sorry, we already did 8.3. 8.4, in following the review, if the Contracted Party determines that disclosing the data would not result in disclosure of personal

data, the Contracted Party must disclose the data unless disclosure is prohibited under applicable law.

So again, the principle here is to set a minimum standard, but still provide the flexibility for Contracted Parties to comply with law, understanding that law is going to vary across jurisdictions. And in some cases, multiple jurisdictions will apply to requests. And then 8.5, if the contract party determines that it can disclose the data, it must disclose the data and document the rationale for its approval.

Again, noting that it's document, not disclose the rationale. And again, apologies for the earlier snafu on the box. We could scroll down a little bit. Sorry, Sarah, I didn't see your hand. Please go ahead.

SARAH WYLD

Thank you. This is just a question about how it's written. So, I'm not asking about the substance. But 8.4 says if following its review. And then 8.5 says, if after conducting its evaluation of the request. Are those intended to mean the same thing or are they substantively different? Thank you.

MARC ANDERSON

Can we scroll up to see 8.3 and 8.4?

SARAH WYLD

5 is different because it says evaluation, but 3 and 4 say review. And I just want to know if that's intentional.

MARC ANDERSON

I'm going to look to staff a little bit. I don't think that's intentional. I think they're intended to be the same thing. Yeah, I think they're intended to be the same thing. So, I think that's maybe language we can clear up to add some consistency. Alan, please go ahead.

ALAN GREENBERG

Just a question. I understand the difference between document and publish. If it is documented somewhere, who has access to it? Is that only if there's a complaint to compliance? Or is there some other use of that data once it's documented?

MARC ANDERSON

That's a good question. I don't remember if there's anything in implementation guidance about the intent of that. The short answer is I'm not sure the answer to that is offhand.

ALAN GREENBERG

Tara just mentioned to me, if the person whose data is disclosed complains to the Data Protection Authority, that may be a use of it. I think we need to somewhere document, and obviously, not today, but make it clear who has access at one point.

MARC ANDERSON

Fair enough. Thanks, Alan. Lawrence, welcome.

LAWRENCE
ROBERTS

OLAWALE- Thank you, Chair. To 5.3, the word must consider if the impact of human rights of the data subject may prevent disclosure. I think before we use the word must, we definitely have to do some work around determining what these human rights considerations are. So, at this point, maybe we should use may rather than must. And to the next line, 5.4, there might be instances where the request itself is for personal data.

Let me give an example where, for instance, an entity wants to run a campaign and the domain they decide to use is not available and would want to know if they could reach out to whoever the holder is to secure such a domain, what will be required in that particular instance will be a contact detail. And so, how do we intend to deal with this so we're not excluding that from their side?

MARC ANDERSON

Thanks, Lawrence. Just a little background. The original language, which this was based on envisioned different paths for when a request involved personal data and when it did not. So, I think you're hitting on a little bit of a legacy of how the original language was crafted. But there is a path for how to consider the disclosure when personal data is involved and when personal data is not involved. Thomas?

THOMAS RICKERT

Yeah, I'm a little bit lost in terms of why we're having a discussion at that level, because we have a consensus policy with the

registration data policy that is clear on how to deal with these things. If you disclose, you don't have to offer a rationale. You don't have to provide it. You don't even have to write it.

If you deny, then you have to document and provide the rationale so that the requester can understand why you denied it. So, why are we trying to work on that language here? I think that we don't need that. I would add, though, that from a legal perspective, I would advise my clients to document the rationale properly because there might be cases in which that is challenged.

And then, let's say there's an objection from a data subject if you've processed data based on legitimate interests. And then it might come in handy that you've documented that, but ICANN should not prescribe how registrars deal with these risks.

MARC ANDERSON

Thanks, Thomas. Great point. And maybe expanding on that a little bit, the original SSAD recommendations were created before we had the registration data policy. And now that we have the registration data policy, there may be some opportunities to pare down the language so that we're not duplicating between the two policies.

And I think your point about the prescriptive nature of the documentation, I think that dovetails nicely with what Alan said. That may be beyond what is necessary for a minimum baseline, but I'll defer to the group. Again, I encourage all of you to get into the

document and provide that feedback directly. If you think that language is not necessary for a minimum policy standard, then let's remove it. Let's make this as streamlined and straightforward as we can. Volker, over to you.

VOLKER GREIMANN

Thank you. I share the concern that 8.4 and 8.5 are duplications, and I think we can remove 8.4 if we just feel like the reference of personal data into 8.5 is an example that can be done in the text or can be done in the rationale or explanatory notes, advisory guides. There's no need for 8.4. And the edits to 8.5 that we've made here are supported as well.

MARC ANDERSON

Thanks, Volker. I think you're getting agreement in the room. So, I think I can take that back with staff and we can figure out how to combine that. Back to my response to Lawrence, I think that's sort of a legacy of how the original SSAD language is crafted, but it's probably duplicative at this point. So, I think I'm hearing strong agreement for that, and we can take that back and propose new language. John, over to you.

JOHN MCELWAINE

Thanks, Marc. So, a couple revisions I had made into my notes here that are now kind of getting overwritten by the new simplified straw man. So, forgive me for stumbling around a little bit. But for personal data, I think that should be capitalized P, capitalized D.

And we should use the definition from the registration data policy just to make that clear. I don't think anybody will have any issues with that.

Secondly, to my point on the principles that there is currently as drafted no standard to be applied, I'd like to suggest that we have a requirement. I guess it would be in 8.3 that when we're talking about evaluation, that a Contracted Party must reasonably evaluate applying applicable law and consensus policies, whether it can disclose, at least put some sort of guardrails.

And actually, that wording reasonably evaluate and applicable laws and consensus policies is language I kind of took from the ADC PDP. I've heard that and was looking at that language with respect to that analysis. I think that's it for right now. Thanks.

MARC ANDERSON

Thanks, John. I think those comments dovetail with Steve's earlier comments about consistency. And I think that's also very clear in the feedback we got from RDRS that there's a desire for consistency across requests. So, point well made. Thank you. David.

DAVID BEDARD

Thank you. David Bedard, GAC, for the record. Just back to the previous comment, if staff is going back to consider who has access to the data about the decision documentation, we might also want to consider how long they have to retain the data or information

for. Just something to potentially integrate into the thinking there.
Thanks.

MARC ANDERSON

Thanks, David. And again, just sort of a blanket comment. When we make this available to the group, please add that feedback to the document. I'm sure staff is taking notes. So, obviously we'll capture the feedback from today, but please make sure you're getting into the document and providing that feedback as well. Owen, over to you.

OWEN SMIGELSKI

Thanks, Mark. Owen Smigelski from the registrars. I want to go back to what Thomas was saying earlier about there's stuff in the reg data policy, so we don't need to duplicate it. I really strongly suggest that the staff goes through and see things that are coming here because we're doing this later in the process and other things have been done.

Let's get rid of the stuff that's been fixed and addressed elsewhere. Putting on my previous compliance hat when I worked at ICANN Compliance, oh my goodness, some of those contracts are just unwieldy and the things that potentially conflict and whatnot. And I don't want to make things worse for Amanda over there.

She has to try and enforce this later. And there's different slight wording and different policies, plus for registrars, we have to comply with that. So, whatever's already established, let's keep

that, and just if we have to make reference to it or something, but let's not overcomplicate things. Thank you.

MARC ANDERSON

Thanks, Owen. And if I could on that point, I think when we consider the implementability of these recommendations, the compliance aspect has to be taken into account as well. So, I very much agree and I think that's something we need to apply as a general principle as we're drafting these recommendations. So, thank you. John, over to you.

JOHN MCELWAINE

Thanks. John McElwaine, for the record, and not arguing against my two learned councils' position here. But I, too, wondered how were we going to reference the registration data policy because we're covering a number of the same points. And what we don't want people to have to do is go to different policies to try to figure out what applies.

So, my gut was to just look kind of like we did in the slide, just use the same language in the policy. But I would also I think could be okay with a reference or a hyperlink to it, but I definitely think we need to take some time or staff could take some time to align it like the personal data definition and some of these timing issues we're talking about. Thanks.

MARC ANDERSON

Thanks, John. Agreed. Yeah, I think that we need to, as a group, decide how we'll manage that. I think we don't want to get in a situation where we're just duplicating language from the registration data policy, but at the same time, we want to make sure we're consistent with the registration data policy. And I'm not necessarily sure at this point the best way to accomplish that, but I think we need to make sure we're doing that as we go through the remaining recommendations.

So, I fully agree there. So, at this point, we've gotten to the end of the queue, and we still have some time remaining in the session. I promised you if we got through all this, we could wrap early, and I know we're coming up on lunch. So, I'll throw the floor open before I get to wrapping things up. Last call on anything anyone wants to add here.

And just to reiterate, not the last call ever on Recommendation 8, there will be additional opportunities to review, provide feedback. We'll have a further discussion within the full group, and there'll be a further chance to review once we've been through all the other recommendations.

As I've said on previous meetings, we know that due to the interconnected nature of many of these recommendations, as we adjust these, we're going to have to go back and consider how they interact with each other and make sure we haven't had changes that have unintended consequences with other recommendations.

I think I'm getting reminded, though, that I'm not actually at the end of the document. So, apologies for that. I got a little excited about going to lunch early, but maybe that was a little premature. So, Anne, do you want to jump in before I get to the rest of the document?

ANNE AIKMAN-SCALESE

Yeah, it's Anne. I want to raise a question about how, you know, what we're doing here in policy might account for the fact of further legislative action. And it was raised with me that there's this thing called the second additional protocol, according to the Budapest Convention, this protocol has not yet been ratified, so, it's not in effect now, but it has a specific section on disclosure with respect to domain name registrations and may affect the definition of personal data in terms of how registrars who would be subject to that protocol would potentially be affected would vary the definition.

I'm not An EU lawyer, obviously, but it was raised with me that this second additional protocol under the Budapest Convention, which I believe was mentioned in Dublin in a GAC meeting too, how we can account for the fact that there are potential changes in law, in definitions of personal data and in access. That particular section deals with cybercrime, I think, but it's more the general question of how you adapt later.

MARC ANDERSON

Thanks, Anne. I appreciate you raising that. I think that's a general concern that I think we have to take into account. I'll note that we couldn't possibly take into account the entire landscape of legislation. And obviously, the fact that new legislation can pop up and existing legislation can change, that happens all the time.

So, I think our goal is just from a principal standpoint, provide a baseline set of policy requirements that we, as a policymaking body, feel should apply in all cases everywhere. And then as a principal, make sure we're allowing enough flexibility as possible for the Contracted Parties to be able to comply with an ever-changing legal landscape.

So, I think that's an important question to raise, and it's a general principle that we need to be taking into account. It wouldn't do for us to craft something that we have to go back and revisit because it's overcome by events, but also recognizing that we can't anticipate every eventuality. John, you have your hand up.

JOHN MCELWAINE

I'm gonna put it down. I see it at 8.6.

MARC ANDERSON

Thank you. Thomas.

THOMAS RICKERT

Yeah, to your point and I think I made that point at the beginning of the zero day session that we need to reference one way or the other

that if there are other regimes such as the second additional protocol or e-evidence, that e-evidence has a its own technical system for disclosure requests to be responded to another request for providing data or preserving data, that the Contracted Party that deals with that through another legal instrument released from the obligations under this one, because otherwise they would deal with multiple legal requests. I don't think that the second additional protocol has a change to what constitutes personal data.

That is a consideration under the EU's digital omnibus, where they want to soften the definition of IP addresses as personal data if the entity that holds the data can't map an IP address to an individual. But I think that we don't need to account for that because then it would not be personal data under certain circumstances and we have a provision on how to deal with non-personal data in this already.

But I agree that we need a carve out for the other legal instruments that might be in place. Also, out of courtesy to the public sector to show that we know what's happening there. And somebody who's responding to an e-evidence request through the e-codex system shouldn't have ICANN Compliance breathing down their neck as well.

MARC ANDERSON

Thanks, Tomas. All right, so moving back to the document, and apologies again for trying to cut short our review of that. 8.6, I think

that's new from the previous straw man, but it's pulled from discussions we've had so far, and I think based in part on a principle from the original SSAD language, and it's that essentially that the requester must have an opportunity to provide additional information if the Contracted Party determines the request is incomplete or additional data is needed.

If we could scroll down, I think have to the implementation guidance. That dovetails a little bit with 8.9 in implementation guidance. That's based on the assumption that there will be two-way communication possible between the Contracted Party and the requester. That was one of the limitations of the RDRS pilot is that it didn't really facilitate two-way communication between the two parties.

So, with the assumption that the SSAD will facilitate two-way communication between the parties, we're putting in this principle that if a request is incomplete or there's insufficient data, the requester will have an opportunity to provide that. We can scroll back up. Steve, go ahead.

STEVE CROCKER

In terms of implementation of two-way communication, two different ideas look possible, and I want to understand if there is a necessary reason for choosing one versus the other. One is to say, need more information, here's what our problem is, please respond to it, and it's an open ticket, and the response.

The other is, more information is needed, we hereby close this request. Feel free to make another request and supply the required information. In terms of the impact operationally, keeping a ticket open is a more complicated kind of thing than a fresh ticket. That's the point.

MARC ANDERSON

Thanks, Steve. I think those are both valid options. My understanding or my read based on the learnings of the RDRS pilot is that there was a desire for the first option and that the RDRS pilot unfortunately, in many cases, is limited to the second option which was a less than ideal user experience where in some cases, the response was denied, submit a new request if you have additional information. So, I believe that's a response to the learnings of the RDRS pilot. Sarah, go ahead.

SARAH WYLD

Thanks. This is Sarah. Can we see that implementation guidance again, please? So, that's really interesting. As we just said, RDRS doesn't have the two-way communications, and that means that in RDRS, there was a lot less data hosted by ICANN. So, even if it's not personal data, there might be confidential data of some sort included in those communications.

And so, I would need to do some thinking about what kind of contractual protections are in place in terms of how that data is handled and accessed, where it's hosted. Like this brings in more.

It's not a bad idea. It might be very useful, but we will need to think more on that. Thank you.

MARC ANDERSON

Thank you, Sarah. Fair concerns. And I think those are maybe one of the reasons why it wasn't included in the RDRS pilot. So, certainly, considerations we need to take into account. Steve, new hand? Okay. Alan, the floor is yours.

ALAN GREENBERG

Thank you. Sarah's comment is relevant, but I don't see how it's different from the original request. At any time, there may be information that we have to worry about confidentiality and privacy. So, whether it's provided as a secondary bit of information or included in the same request, it's all there.

There's a substantial difference if the person has to submit a new request in that the timing, suddenly, they can refuse the next one also for the same reason and it can go on almost forever with no tracking that there's a problem. So, I think the ability to add to a request is important. I'm not sure that we need the words there of full functionality two-way communication.

There may be more subtle ways of doing it where the contractor party gets back to the requester and says you need more information and then the requester can update the ticket. But that doesn't necessarily imply full function two-way communication.

You could probably finesse it a lot easier than that without providing that full functionality.

MARC ANDERSON

Thanks, Alan. Good points. And I wonder a little bit if we're getting into the realm of implementation. And so, as we're looking at this language, maybe keep in mind the principles of what we want to recommend and leave the implementation details to implementation. Sebastien, go ahead.

SEBASTIEN DUCOS

Sebastien Ducos, for the record. So, I agree with you, Marc, and I don't know how to solve that in terms of words. Just philosophically, I just wanted to remind that when we developed RDRS, it was out of any policy, it was a pilot, and as such, ICANN said, I don't want to carry any of that information.

If we now feel that it should be conversational back and forth, I would advocate for having at least some guidance so that ICANN can carry that responsibility because policy says so. So, we shouldn't completely ignore it at a policy level.

MARC ANDERSON

Thanks, Sebastien. Fair points. And we do have staff liaisons with us who I'm sure will be able to provide us guidance if we're suggesting something that they're not willing to implement. But fair points. We have to keep that in mind as we're going through our work and considering the implementability of our

recommendations. All right. So, I've gone from being excited about getting us to lunch early to having a little over five minutes.

So, I'll give Volker the last word before I wrap up with closing comments. I know we haven't gotten through all the language. I'll work with staff to figure out the best time to wrap up that discussion and we will make this language available to the group to review and comment on. But Volker, last thoughts for today's session.

VOLKER GREIMANN

Thank you. I appreciate the honor. Volker Greimann for registrars. Just in response to Sebastien's comment, I have a little bit of concern in routing the data through ICANN because while third parties have a legitimate right to receiving that data, ICANN unusually does not. And disclosing it to the legitimate requester is one thing. Disclosing it, even if it's only for routing to ICANN, could be a problem, and I would be very reluctant to do that.

MARC ANDERSON

Thanks, Volker. Fair points. I'll just note that the language is intended to facilitate, or the language is intending to suggest that two-way communication is possible, but not that the requested data would be passed from the data controller to the data requester via ICANN. So, fair point, but that is not the intended use case of the language.

All right. So, if we could go -- do we have a wrap-up slide? No. Okay. No wrap-up slide. So, in closing, we're down to about five minutes. So, first, thank you, everybody, for an excellent discussion today. Hopefully, having the diagram showing the flow of the authorization a Contracted Party would go through was helpful. I think that came from a suggestion from somebody in the room on Monday. Thank you, whoever that was.

As far as next steps, we'll figure out a time to wrap up the discussion on this language as far as an initial reaction. But we will be making this language available. I think we can confirm this, but I think we'll update the strawperson document with this new language. Yeah, I'm getting nods. So, we're going to update the strawperson document with this language, make it available for everybody in the group to review and provide feedback on.

Once again, thank you for all the discussion we've had both in meetings and outside of meetings. We've gotten great feedback in the Google Documents and on the mailing list, so I encourage everybody to continue to do that. If you haven't gotten into the Google Docs or kept up with the mailing list, please make sure you do that. Our discussions won't be just on the list or just during these meetings, because if they are, we just won't be able to meet our deadlines.

So, thank you, everybody, for an excellent meeting. I thought we had a really, really good dialogue and moved the conversation forward. I look forward to seeing everybody in our last session

tomorrow. So, I guess two meetings down, one to go. And with that, I think we can end the recording and adjourn.

[END OF TRANSCRIPTION]