
ANDREA GLANDON:

Good morning, good afternoon, and good evening. Welcome to the Registration Data Policy IRT meeting being held on Wednesday, the 13th of July, 2022 at 17:00 UTC. Attendance will be taken by the Zoom Room. I would like to remind all participants to please state your name before speaking for transcription and recording purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. As a reminder, those who take part in the ICANN multistakeholder process are to comply with the Expected Standards of Behavior.

Before I hand it over to Dennis Chang, I did want to let the IRT members know that Susan Kawaguchi has resigned from the IRT. That was effective last week. And I will now turn it over to Dennis. You may begin.

DENNIS CHANG:

Thank you, Andrea. Yes. And we want to thank Susan for her contribution. And I hope that she will participate in the public comment, in her own capacity, from wherever she is. I'll probably have to reach out to her and thank her personally. But if you do see her in your circles, please thank her for us.

Today, our agenda is really simple. We want to hear a little bit the status from RDAP. And then second, we want to have some discussion on section five. CPH has asked us to consider another set of language and we're trying to get inputs on the baseline language. Then we'll just tell you the process and the status as we prepare for public comment next month.

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.

Let me see. I think next I want to share. Okay, RDAP. Oh. Let's see. Roger, Alex. Sorry. Alex could not be here so just wanted to let you know he let us know in advance. So he is an apology. But I think Alex and Marc, who are from the working group, are here—Roger and Marc. Did any of you want to give us a quick status? Go ahead, Roger. Thank you.

ROGER CARNEY:

Thanks, Dennis. Sure. The RDAP Working Group last met two weeks ago, I think, now—almost two weeks ago—and completed the edits to the technical implementation guide. RDAP has made two different documents—the implementation guide and then the profile itself. The implementation guide is more technical and really doesn't change a lot based on data changes. But the profile changes any time the data changes. The group did complete its edits on the implementation guide and made progress on the profile.

The group is scheduled to meet the next three weeks. The hope is, in the next two weeks, we have all the edits done for the profile and ready for review after that. So I think we're looking at right at the end of July by the time all of our planned edits and updates should be ready for review for this group. So I think we're on target for three weeks, two weeks to be ready. So I think that's our update unless Marc has something else.

DENNIS CHANG:

Mark, go ahead.

MARC ANDERSON:

Thanks, Roger. Great update. I'll just add that the working group is aware that we're late getting that to the IRT. So they added additional meetings to the calendar to make sure we get our work done. And also, for the most part, the substantive work is done and we're cleaning up redlines at the point. I think the only substantive work that we haven't closed out is around the redaction and the new IETF standard or the new IETF proposal for redaction. That's certainly taking the bulk of the time. The rest of the work is largely just cleanup at this point.

DENNIS CHANG:

Thank you. That is good to hear. I think that as long as we get it in July, we can accommodate an August public comment. And I might as well tell you that, internally, we have selected 17th of August as the date to open public comment. So immediately after you provide it, we're going to obviously share it with the IRT for any feedback. But personally, I don't expect anything substantive within that time from the IRT.

So I think we're safe to go to the public comment, or at least plan to go to public comment, with the versions that you provide and then really use the public comment to gather inputs from all those technical people out there. So that's my plan. 17th of August is our D-date. And once we open public comment, I think we need to do some celebration. I'm trying to see if we can plan a party in Kuala Lumpur. Wouldn't that be exciting? So stay tuned. It will be fun.

Let's get to our section five. As you know, the document, everything is done, considered locked. And then the only thing that we're looking at

is section five. This was designed. We've said that we are going to work on section five when the Data Protection Agreement draft was available for us. But then we find out that it's not available in time. And rather than just waiting for this agreement to come to the IRT with an indeterminate waiting time, it would be better for us to push on to public comment because there's a lot of things here we've done. We need public comment. And there will be, certainly, a lot of value in getting the public in everything else that we've done.

And also, yes, Data Protection Agreement is required and that's part of the recommendation. However, exactly what's in there ... And we've heard from Cyrus and company that whatever happens over there in the document itself, agreement, is not going to really impact our policy language. That's how I understand it.

So what we need to do is finish up this last thing and get this document in shape for our public comment team. We have a process within ICANN. And Andrea is part of that team. It's like a public comment team. It's an internal processing machine. We hand it over to them and they take over the documents, projects, and then they go through all their processing for public comment, including drafting the announcement and whatnot. So we are anxious to hand over this document to them so they'll have time to work on it.

So let's get our discussion started. The first language that you see here in black is the baseline language that we proposed. The language was designed that our collective effort, internally, to do a couple of things. One, stay in line with the recommendations. Two, try to make sure that the eventual outcome from the negotiation team is supported,

whatever that outcome may be. And that is kind of tricky. But at the same time, we do not just cut and paste the recommendation's language because that would not achieve the implementation that we need to do.

So that was the thinking behind these languages. It was a lot longer. And we've obviously cut it down due to your suggestions. But we think that every word here—every sentence, it's not long—are necessary right now, at least as a baseline language to go to public comment. Of course, we may learn some things later. But this is, as of today, for public comment, the set of language that I think will achieve our purposes. So hands. I'd like to see who would like to speak. I want to hear from you. Beth, go ahead.

BETH BACON:

Hello, friends. We talked a little bit about this during the meeting at The Hague. We had some questions about the implementation. And it seemed to raise more questions than it answered, simply because we felt that the recommendation language, while we understand normally you don't cut and paste, in this case, the recommendation is pretty clear. It's as required, registry operators and ICANN will enter into data protection agreements. I think that the longer language, I'm not sure what implementation problem this is solving or where it's clarifying because we ended up having more questions.

So I'm happy to discuss that a little bit more and understand that better. I know some folks were not in The Hague or able to dial in because of

time challenges. So I don't think it will be too repetitive if we chat about that.

DENNIS CHANG:

Sure. Let's chat. By the way, this is a new language. It's not the same language that we were looking at in The Hague. This language was crafted after learning that the negotiation or the conversion at The Hague has maybe shifted. And from that, we were getting advice that we could not keep the language that we had before. So we threw that out and came up with this one. So I wanted everyone to know that.

The implementation aspects, if you are asking what is the implementation part of this new language versus just the recommendation, we're trying to deal with things like in the recommendation, we have things like "as appropriate" and "where applicable." We thought that while it may be good for recommendation language, and certainly it is, but during the implementation, we need to do a little more to see if we can define what that means. So, Beth, do you want to speak again? Go ahead.

BETH BACON:

Thanks. I think that's helpful, noting that this is different language. But I apologize. I wasn't able to tell because it's not redlined. It's just new or different. Could you pull up or provide what we looked at in The Hague? Because I don't think it exists. I'm trying to look in the document but I don't know. I don't want to berate the Google Doc, guys.

DENNIS CHANG: Yeah. Sorry. We're not even considering that anymore. I'll tell you why, Beth. It actually specifically asks for DPS and DPS has to be provided. And if you can try to think about that, that's no longer acceptable to you or us, right? The other language said DPS has to be done. There has to be a DPS. I don't think we want to tie it down that specifically at this point because you guys are still discussing how you're going to do that data protection agreement, correct? You know more than me at this point. I defer to you.

BETH BACON: Then maybe here's my question. I don't really want to comment on the discussions on the DPS just because they're bilateral. But I have one question. Whoever has got their mouse in the middle of the text, can you move that so we can see?

DENNIS CHANG: That's me.

BETH BACON: Then maybe I'll just take a second to look at it.

DENNIS CHANG: Sure. We'll have Sarah speak While you look at it.

BETH BACON: Okay. Could I just add one more point? I also just wanted to note that while you're saying "as applicable—" we still use that language in this

new one—I think that the reason that the recommendation is good language is because it is flexible and future-proofed in that it will be data protection agreements as appropriate. And there is discussion of processing registration data as applicable. So I think it provides some flexibility for the future. But I will lower my hand and let Sarah say it so much better.

DENNIS CHANG: Go ahead, Sarah.

SARAH WYLD: Thank you very much. Hope you can hear me okay.

DENNIS CHANG: Yes, I can. How are you, Sarah?

SARAH WYLD: I'm doing great. Thank you. Thank you so much for letting us discuss this again. I do think it's really important that we reach agreement on this topic. I still am of the opinion that the CPH-proposed language is better because I think it more correctly implements the recommendation. And I think it is more understandable to the average reader, and just is generally a bit more well-laid-out.

So a couple specifics on that one. I find it confusing. I imagine it would be very confusing to a new reader to start with, "This policy does not

require the DPA unless law ...” That’s just a strange introduction. So there’s that.

And then, Dennis, I agree with you that some of the language in the recommendation can be a little bit confusing— “as applicable,” “where appropriate.” But I think that in the version which is green on screen, we maintain those areas where it’s not always going to be the same while still requiring what the recommendation said.

And then finally, I just want to be super clear. The important parts that are in the staff suggested language are also in the CPH suggested language. So we’ve got that registry operator or registrar must enter into the required data protection agreement with ICANN. That’s in both of these things. What’s not in both is that the Data Protection Agreement will include, where appropriate, the legal basis for processing data. That’s only in the CPH version. I think it’s important that we keep that version or that we keep that language. So that’s several reasons why our version is the one that I think is better. Thank you.

DENNIS CHANG:

Thank you. Roger?

ROGER CARNEY:

Thanks, Dennis. I think I’m just going to agree, really, with a lot of what Sarah said. I think the issue is it seems weird that we start out with a negative sentence— “does not require,” as Sarah mentioned. That just seems weird that that’s spun that way. And along with Sarah’s point,

the language proposed obviously is shorter but seems to capture everything, and maybe even a little more, of what is being said above but with fewer words and less confusion is my thought. So thanks.

DENNIS CHANG:

Thank you, Roger. On the surface, it seems strange to say that you are not required to do something. But this was crafted based on the feedback that we were getting from the CPH, actually. We were trying to help you—to rest you assured that the Rec 7 determination and position that the Board has, and GNSO has agreed and passed down to us, we are making it clear that we understood that an implementation language implements that.

But I take note that when you're reading a recommendation, to start out with what you don't have to do is odd. I think I agree with you there so thank you for that input. And I have Lauren next. Go ahead.

LAUREEN KAPIN:

Thank you. I'm a little concerned about a couple of things. First of all, the original recommendation. It strikes me as a little odd that the recommendation is actually much more detailed and specific than our implementation, in a sense they almost are masquerading as each other in terms of the level of detail in the recommendation and the pithiness of the alternative language. At an easy-to-understand level, I certainly agree with Sarah that this language is much more reader-friendly and that's definitely a good thing.

Where my second concern comes into play is that the original recommendation really focuses on ICANN Org and their responsibility to enter into required data protection agreements as appropriate. And this reworking deemphasizes that. The tone of it, I think, makes it sound perhaps more permissive than the recommendation itself sounds. So there seems to be an inconsistency there.

I also would love for this conversation to include Alex, who actually registered his disagreement here—I know he can't be with us because of a death in the family—and Chris, who actually has some expertise in these issues. But those are my preliminary sense.

And perhaps, dare I ask this question but I would love to get a sense of the answer. There have been shifting sands here. I know these negotiations are ongoing. But is it Org's position that they don't need to enter into these agreements with the registries and registrars? I'll leave it at that.

DENNIS CHANG:

Laureen, thank you for the question. I think I have to agree with Beth that I cannot and shouldn't comment on the negotiation that's going on. I am not in that negotiation. But Beth has a hand up. Whatever light you can share, Beth, is okay. And we understand. Go ahead, Beth.

BETH BACON:

Thanks. Actually, I just wanted to agree quite a bit with Laureen. I think that you made some fantastic points. And I am not going to speak for ICANN because that question was directly to ICANN. So I understand if

you want to take that back and maybe respond. But I don't think that any ICANN staff on this call wants me to answer for them.

But yeah. I made a little suggestion in the chat, where perhaps we can get to ... I think there's large group agreement that this is pretty complicated language. And it's a little bit of a head tilter when you read it. Perhaps we can try and merge our two suggested texts and get towards something that's both operational and clear.

DENNIS CHANG:

I see. Okay. Yeah. Always a good suggestion. Requirements-wise, I don't think that we are actually disagreeing on the requirements. And I think that, largely, and maybe most definitively, the Rec 7 conversation between Board and the GNSO has made that decision for us. So we're not really talking about a requirement difference here.

So what we need to do is, as you say, make this language, number one, easier to understand. I cannot argue with that. But at the same time, rather than just copying and pasting the recommendation's language, go a little bit more toward the implementation side to maybe define the requirement a little more. As Laureen points out, we should go back and see what recommendation details we can gather and maybe take another stab at it. I think that's the next step for us. So we'll do that. Beth, you have a hand up. More input?

BETH BACON: Yeah. I think that's great and I look forward to trying to find something that ... Let's have these have a baby—a really cute baby, the cutest baby.

DENNIS CHANG: This is our baby. You know once we give this birth to this, you guys will remember your mothers and fathers for years to come.

BETH BACON: That got graphic.

DENNIS CHANG: Then people will ask you, "Why did you do this?" And you all have to answer.

BETH BACON: I'm going on permanent vacation after this. Was this our only thing on the agenda? Because if we could maybe take five minutes of quiet drafting time, maybe we could just finish this on the call. And then we can [be like], "Oh my god, we're done."

DENNIS CHANG: Yeah. One thing. This was the only thing that we have on the agenda. But if you want to take a stab at it all together, we can do that. And then, of course, once we have something we want to consider, obviously you will have time to take it back to your stakeholders and check with your team. But that's okay.

The only other thing we had was the public comment preparation status that I wanted to report. I think I already did. The 17th of August is the date. We're marching towards it. So the pacing item there is the RDAP Working Group—the document. As soon as it pops out, boom. It goes to the IRT and then we go to our public comment. The machine starts rolling. So that's the plan.

But what does everybody think? Do you guys want to do this together now or do you want to end the call here and maybe have some quiet time on your own. It's hard to draft a language as a team like that. I'm amazed how those GAC guys do this all the time. GAC guys, I mean Laureen. Laureen is good at this. Chris, you're good at this.

LAUREEN KAPIN: I'm chuckling. Chuckle, chuckle.

DENNIS CHANG: I've seen you guys do that. Oh my gosh. 100 people [inaudible]. Okay. I'll keep quiet for a little bit. I think some people are off doing it already. And they may be posting it for consideration so feel free to do that.

BETH BACON: Dennis, I just dropped something in the chat, just trying to boil it down. ICANN, if you guys want to take a look at it and marinate on it and we can follow up over e-mail, then that's totally fine with me. I just wanted to get us started.

DENNIS CHANG: Yeah. Boy, you're fast. Good for you. Is that it? No. That's not it. I'm trying to copy your chat into the document here. Can someone on my team help me? No. I can't do it. That is it.

BETH BACON: What if I Skype the language to you?

DENNIS CHANG: Hold on. I think I did it. Did I do it? Is that your language? It's even shorter. Is that it?

BETH BACON: It feels like it. You did it. Way to go.

DENNIS CHANG: I'm good for something. Okay. So we have a couple of versions proposed by CPH. Anyone else have a version they want to propose? But I like your idea of breaking here and then give everybody some time back. You got half an hour back from me today. Lucky day. Then think about it and see what we can do.

The goal is, obviously, stay in line with the recommendation. Number two, let's not just copy and paste the recommendation. We're supposed to implement. So how much can we say and do in terms of language for implementation to make it a little more specific than just the recommendation? Go ahead. Beth.

BETH BACON:

Thanks. For ICANN, if you guys are going to go back and you want to think about some of the things that we took out, I think we could certainly still include the “as may be updated from time to time.” And if we have an issue around having the hard must, then we could think about a different way to say that. But I think that is what’s in the recommendation. So I just wanted to note that that’s why I did leave that capital MUST in there. But certainly flexible. I’m just trying to make this as simple as possible for readers. But thank you, Dennis.

DENNIS CHANG:

thank you. I think our language actually included the same MUST. So I think we’re in agreement with you there. Okay. Thank you so much, Beth.

We have a question from Amanda Rose. Her question is “as applicable” seems just too broad. So we attempted to use “where applicable law requires.” That is a little bit more of a tight requirement. So that’s why we are trying to avoid “as applicable” and replace it with “where applicable law requires.” So I wanted you to know the thinking there. She is giving us some good chat here. “Not a question to answer here, just a consideration for drafting.” Yeah. Thank you, Amanda. Anyone else have an input?

The language is “as appropriate” in the requirement’s language. When I see that, I take that as, “Okay, implementation team. Now you have to define what ‘as applicable’ really means.” And we tried to do that.

Beth, hand’s up again.

BETH BACON: Yeah. I wanted to follow up on the question there. I'm totally fine with Sarah's suggested edit. And great question from Amanda. I guess my question is if this is going to turn into ... It is. It is going to turn into contractual requirements and it is contractual requirements. Where we're saying "as applicable law requires," is that, as we discussed throughout the EPDP, ICANN still doesn't want to touch that with a 10-foot pole? The applicability of law is still to be determined by registry operator or a registrar, yes?

DENNIS CHANG: Yeah.

BETH BACON: So that's not something ICANN Compliance would be saying, "Hey. We question your evaluation." I think that's just something that we'd want to clarify.

DENNIS CHANG: From what I understood, that was actually the crux of the Rec 7—who decides and who determines. And I think it was clear to me that we're leaving it to the Contracted Parties to actually determine the applicable law. ICANN certainly isn't going to get into the law discussion. That's what is made clear to us. So I think I'm agreeing with you, Beth. You have the benefit of the conversation going on on both fronts. But that's how I understand it. I'm with you. Excellent.

Any more? Okay. Thank you very much, then. I'll close the meeting here and we'll see you online. Thank you, IRT, for just the fantastic support. We're almost there. Just hang on a couple more weeks. Bye, now.

ANDREA GLANDON: Thank you, everyone. Have a wonderful rest of your day.

[END OF TRANSCRIPTION]