
BRENDA BREWER:

Hello everyone. Welcome to the BC membership call on 21 October 2021 at 15:00 UTC. Today's meeting is recorded. Kindly state your name when speaking for the record. Attendance is taken from Zoom participation. We do have apologies from Mark Svancarek, Marie Pattullo, Toba Obaniyi and Lawrence Olawale-Roberts.

With that, I'll turn the call over to Mason. Thank you.

MASON COLE:

Thank you, Brenda. Greetings again, everyone. Good morning, good afternoon, good evening wherever you may be. Welcome to our call on 21 October, the week before ICANN 72. We have a pretty dense agenda this morning and only an hour to get through it, so we're going to begin right away.

First on the agenda—well, first let me just ask, are there any updates or changes to the agenda anyone would like to suggest? Okay, very good. On agenda item two, we have a guest today, Elena Plexida from ICANN, and Elena has generously agreed to share some time with the BC this morning to discuss in particular regulatory developments in Europe that may affect ICANN's work and our considerations of ICANN's work. And Elena has agreed to give us a briefing this morning and to answer some of our questions.

So Elena, I understand you have a couple of slides to share. Is that right?

ELENA PLEXIDA: Yes, just as a background as we discuss.

MASON COLE: Okay. I will turn the floor over to you now and you're welcome to begin. I'll watch the queue for any questions that come up. So please go ahead.

ELENA PLEXIDA: Thank you so much. And thank you again for having me today to discuss where we stand with NIS2. Mason, interrupt me anytime. I'm very bad at watching the chat when I'm speaking. Next slide, please.

So as bullets to what I want to refer to is where we are with the legislative procedure. The provisions that are related to the scope, the provisions that are related to WHOIS, and then I also added one small addition that has to do with the DSA because it is relevant in my mind. Next slide, please.

So where are we with the legislative procedure? Let me start by saying that NIS2 is a pretty important piece of legislation. As it is the first time that we have legislation touching that way on the DNS, we think it will set the scene for future initiatives and it seems that there could be future initiatives that will touch on the DNS. And would like to see it adopted the most appropriate way possible, I would hope, which could be to give legal basis or guidance as to how the GDPR should be implemented when it comes to legislation data but not interfere with the multi-stakeholder model and what the ICANN community is doing, which unfortunately does not seem to be the case, at least not in all places within NIS2. Next slide, please.

Where do we stand? As you know, this is a proposal like every proposal that has started by the commission in December. Right now, the European Parliament and the Council are separately examining the proposal internally.

On the parliament front which is going much faster, we have the rapporteur from the lead committee which is ITRE. He had his first report out in May. That means that all other members of the European Parliament have an opportunity to propose suggestions on it, including himself. So that more comprehensive report was out in June.

And now we're waiting for a final vote which was supposed to happen mid-October but they postponed for the end of October. ITRE is the lead committee, but other committees of the Parliament such as LIBE or IMCO are also giving opinions. So you might have heard of different rapporteurs and different reports. This is the reason why.

Overall, the rapporteur has wide support for the edits that he suggested on the scope side. On the side of Article 23, the WHOIS, a certain political party within the parliament, the greens, are advocating for deleting it overall. All of it. They don't like it. But specifically, if they have to keep it, they don't like the part that speaks about who are the legitimate access seekers. They want to see that very narrow.

Now, the rapporteur essentially because he has the other political parties with him does not really need them, to put it that way, but I understand that he wants to include them nevertheless. So that's one of the reasons that the vote has been postponed.

On the Council side, things are going much slower. The Council works with issue compromising proposals—the presidency issues compromise proposals, and then the member states come together and discuss, and you have all this [inaudible].

They only had two, so far, compromise proposals, with not much done on the DNS-related parts. The presidency has told us that this is because they have not really got into real discussion on these parts and this is coming. It's in the making.

We have heard that some member states question Article 23 altogether. They're saying, what is the purpose of this article, why is it in there? This is a directive about cybersecurity and they don't see the relevance.

Now, the Council is saying that they would be ready by mid-November. If you ask me, this is too rushed and I don't think they will make it. But that said, it would not be that long. I believe early next year, anyway, next year, the Parliament and the Council will be ready to start negotiations between themselves for the final adoption.

Now, as we discussed, I will be showing you some certain provisions and some edits on them. Those edits that we will see are from the Parliament, are from the rapporteurs, both those that are publicly available. I'll also go into where things stand now as regards to the edits. But as they're not publicly available, I've not put them on the slides. Next slide, please.

So with regards to NIS2, there are two big different issues to different buckets that touch on the DNS, if you will. The first one is the scope.

And it is often overlooked. Next slide, please. So in NIS2, as you see the underlined text is Recital 15 where the commission—as it is a commission proposal—is specifying what is the scope of application of NIS2 when it comes to DNS. Essentially, it is everything that is under the DNS. What they write there is not accurate in itself, they didn't need to specify for example the root servers as they are already, as they're saying, both authoritative and recursive services are in there.

In fact, with this definition, it's not only the root servers that are inside, it's the root itself, the IANA functions. I don't know if they realize that, to be honest. Except from the root and the root servers, the ccTLDs, even the ccTLDs of other countries are in there. Because of the extraterritoriality of the GDPR, everyone that's offering service in Europe is there. Next slide, please.

As a quick reminder, okay, what is the issue and what would be meant if you are under scope? It means that you have to implement certain cybersecurity measures by Article 18. It means that you have reporting obligations so if you have an incident that could affect your service, you have to report that to Europeans. And finally, you have to provide contact details [inaudible] minor thing.

Importantly, on these two obligations, cybersecurity measures and reporting obligations, if you fail to do what needs to be done, you can risk fines as a DNS operator. As I said, this is super broad, in two ways. First, it includes even [enthusiasts] that are running their own recursive or authoritative service on their laptop, and they're by no means essential. It's also too broad on the side of root servers and the root, for practical reasons and for multi-stakeholder model reasons, if you will.

Practical reasons, root servers are a voluntary service, they are not there for revenue. If they risk liability and fines, that might have an effect on how the services are provided to the public. Some root servers are operated by foreign governments, so I really wonder how the Europeans expect to impose obligations on another governmental entity that is outside the EU.

You might not even exclude seeing reduced services from those servers that are not in the EU. Basically, we are also wondering what is the problem there, since the root services are very resilient and nothing has happened in all these years that they've been operating.

And with respect to the multi-stakeholder model, in 2016, we had the IANA transition so that there is no single government that could play a role, even a minor role—or major role, you name it. [The decision] will really be up to the multi-stakeholder community.

So if now the EU is unilaterally imposing regulatory obligations on the root servers and the root, it sounds like it is backtracking from the multi-stakeholder approach that they have [inaudible] so far. And more importantly, what is to stop others from doing the same? You might know that we're heading into the ITU plenipotentiary. Russia has put forward a proposal for a candidate for the top job of the ITU. And this gentleman is running with a clear campaign saying that we need to transfer some of the Internet management [inaudible] specifically to the ITU. So it would be like giving ammo. We're afraid of such discussions. Next slide, please.

What you see here is Recital 15 and the respective article. The rapporteur tried to address that issue by excluding the root nameservers, and I have to tell you that he received heat from the European Commission on that point in the public meeting where he was presenting his views. The European Commission does not understand why there is an issue with including everyone and the root servers in particular, and they said clearly that they will insist on it. Next slide, please.

I will now turn to the WHOIS part of it, unless there's any question on this part. Okay. Next slide, please. This is Article 23 just for reference. As you know, member states will have to make sure that registries and registrars collect, maintain information, provide access to more specific domain name registration data to legitimate access seekers, etc. Next slide, please.

These are amendments that the rapporteur has proposed on Recital 59. What I wanted to show you here is the word "verified." So he added that maintaining accurate, verified and complete databases. And further below in red, there is some explanation as to verified, including that registries and registrars have to ensure the integrity and availability by implementing a confirmation process for registrants.

Now this text is not exactly the same right now. [When we saw that, we were wondering] what exactly verified would mean and how would it be understood and implemented further on. Remember that this is a directive, which means that then you'll have 27 member states understand it the way they understand it and implementing into the national law.

We're also wondering what is accuracy supposed to mean. Maintain accurate and complete domain name registration data. Is it understood that it has to be 100% accurate? What is the point there?

So now in the parliament again, the latest compromise is trying to clarify in a recital that in practice, the collected data may not always be thoroughly accurate, is what they're saying, and with respect to the verification, it says using a best effort approach, these verification processes should reflect the current best practices employed in the industry. These best practices in the verification process should reflect the advances made in the electronic identification process.

MASON COLE: Elena, may I interrupt here?

ELENA PLEXIDA: Of course.

MASON COLE: Is this new information? I'm not sure that we've seen it. is it posted somewhere where we could see it?

ELENA PLEXIDA: No, this is not public. It is what the Parliament is negotiating internally. The rapporteur trying to bring together all the proposals that he got from different members of the Parliament and from different political parties. So what I read out now is not public.

intellectual property, protecting hate speech and fraud [and what have you].

Now, the wording as it is is [inaudible]. I can read it out. Legitimate access seekers should make a duly justified request to access domain name registration data on the basis of Union or national law, and they may include competent authorities under Union or national law for the prevention, investigation or prosecution of criminal [efforts,] and national CERTs or CSIRTs.

So you see it seems like the Parliament is narrowing it now. At the [Council level,] we have nothing on that front yet. Next slide, please.

What I wanted to show you here is that the rapporteur also tried to make an effort to be a little bit more specific and helpful, I understand, to his view with respect to being able to publish the information that belongs to the registration of legal entities.

In the latest iterations and discussion, I see that they have added more meat to it in a recital, so they're trying to say that it will be the legal person that will be required to either provide a generic email address or an address that is publicly available otherwise or to give consent to the publication of a personal e-mail address. And they're trying to say that it will be the legal person that should be able to demonstrate that the consent has been given. In other words, trying to put the burden, if you will, for proving that the consent is there, on the registrant. That would, I suppose, help registries and registrars more with being able to publish the e-mail of a legal person.

MASON COLE: Elena, I'm sorry, it's Mason again.

ELENA PLEXIDA: Yes, of course.

MASON COLE: Thank you. And by the way, BC members, if there's a question or comment that you'd like to ask or make, please raise your hand and I'd be happy to call on you while we proceed through this. Elena, I didn't mean to interrupt you, but I know the BC is interested broadly in NIS2 directive development in general, but I know that many of our members feel like it's important that legitimate access seekers do have the ability to get WHOIS data for a variety of purposes, and that includes nongovernmental authorities. Can you comment a bit on that?

ELENA PLEXIDA: Yes. I know that, and that's why I mentioned specifically that although in the first iteration of the Parliament thinking, they were giving a quite broad definition, now they're narrowing it. The reason why they're narrowing it is because of the greens, which as I said at the beginning is a political party that disagrees overall on Article 23 in particular about that.

On the Council front, we haven't seen any movement on that side. I will explain at the end, but I can also of course now say that I'm engaging with all these people trying to explain, and this is a point that we have said in several occasions, that it doesn't make sense if you only do it for

your CERTs or the CSIRTs. What's the point of doing it at all? There's a variety of actors that need this access.

Now, the Parliament is quite advanced. I'd be more than happy to keep reiterating or [insist] more on this point or any other point that you feel is important while we're interacting with the Council people since they are still considering Article 23 right now. So if there's any particular input, please let me know.

MASON COLE:

Thank you, Elena. That's very helpful to know. Can you comment on what you know about what European Parliament members are thinking right now in terms of an update to Recital 62 and/or Article 23? And is ICANN advocating for any particular position? ICANN Org. Or are you monitoring this and hoping that the developments expand to include the concerns of the BC and others? Did we lose Elena?

BRENDA BREWER:

Yes, we just lost Elena.

MASON COLE:

Oh no. Okay. Brenda, do you think you could try to get her back quickly?

BRENDA BREWER:

I do not have a phone number at the moment, but I will send her a quick message.

MASON COLE: Okay. Thank you very much. Members, I'm sorry for this, looks like a little technical hiccup. So let us then—

STEVE DELBIANCO: Mason, if I may, the question you were asking was dead on. We'd like to know whether the Org itself has a position or they're just acting as a conduit for ACs and SOs. And if so, how does she reconcile the fact that some might be asking for fewer people to have access to the data, and how does she reconcile what we're asking for versus them, I wonder?

MASON COLE: Yeah. That's question that I know lots of us want answered. So I hope she can reconnect.

BRENDA BREWER: [inaudible] is back.

MASON COLE: Oh, she is.

ELENA PLEXIDA: I'm back. I'm so sorry for that.

MASON COLE: Thanks, Elena. Well, I was asking a question on behalf of the BC. The question was, what specifically is ICANN advocating for in its discussions with European regulators? Is ICANN being a conduit for the concerns of

BC and others, or is ICANN pretty much monitoring the situation and seeing where NIS2 develops?

ELENA PLEXIDA:

Well, advocating, I'm not sure it's the right word. What we have been doing is we have set up webinars for both the Parliament people and Council people to explain how things work first and foremost, what is the DNS, what is the recursive side, what is the authoritative side, what is the role of registries, what is the role of registrars, what is the community doing, work that already exists and how things work so that they are informed to the extent possible while they're making their deliberations.

When it comes to specific points, again, advocating is not the right word as I said, but we do of course try to bring to their attention the concerns that exist. As an example, here, if we're talking about legitimate access seekers, here we said to both of them that it is not enough if they only accept or include as legitimate access seekers authorities. That's not going to solve but a small part of the problem.

MASON COLE:

Okay. Thanks very much. And Steve has a question in the chat too about whether other ICANN ACs and SOs are asking you to encourage restrictions on data or, again, is it more a question of ICANN just conveying information about the impact that NIS2 may have on the DNS?

ELENA PLEXIDA: No, it's rather the latter, conveying the impact that it can have on the DNS and in the way the multi-stakeholder model works. By the way, I have not heard of any other constituency that they would see the restriction of data. Not at all.

MASON COLE: Okay. That's good to hear. Okay. Thank you for entertaining the question. Please go ahead.

ELENA PLEXIDA: Mason, if that's too detailed, I'm sorry. I thought I should share some points that I felt could be of interest to the BC.

MASON COLE: No, you're doing fine.

ELENA PLEXIDA: Okay. Next slide, please. Slide 14. The reason I'm showing you that is because of GDPR 6.1(c) [inaudible] GDPR 6.1(f). As you know, right now, registries and registrars have to rely on 6.1(f) of the GDPR to do the processing and most importantly the disclosure, which makes them feel very reluctant, being afraid of fines to give out data.

Now, the rapporteur in an article had put very nicely that that processing could be done under 6.1(c) of GDPR. 6.1(c) would mean that you have to process under a legal obligation, which would make life much easier for everyone.

This is still there in the parliament's discussion, but unfortunately, is not anymore in an article. Now it is in a recital. I don't know what is your view on that, but at least personally—that's not an ICANN view—I think that recognition of 6.1(c) would be a good thing and it's one of the good potentials of NIS2. Next slide, please.

I'm showing you this addition again by the Parliament that the Council has not considered yet. We wanted to make sure that Article 23 does not only apply to registries and registrars but it also applies to privacy proxy brokers and resellers. Next slide, please.

These are the articles and some of the changes reflected in the recitals. You can see them in the articles too. In paragraph two, if you look there, you'll see an effort to specify a little bit more which data should be collected. And they're saying it shall include at least this and that. the Council has taken the same approach but they did not include address or phone number.

Now, coming back to the discussion about how the ICANN community works and the work that the community is doing, I think we are running a slight risk here and it is the following. Member states will have to take that and then make it national law. If each member state reads that differently, then they'll set different requirements for which data to be collected at their level. So you'll have 27 different set of requirements plus the ICANN requirements. That's not really reassuring. Next slide, please.

I don't need to insist on that at all, it's just that you see again, verified and legal persons as well to publish information. Next slide, please.

Another addition that has been made also by the Council is that a any request to a registry or registrar shall receive a reply within 72 hours. That is a reply or response, not necessarily the data if someone's not entitled to get the data. Next slide, please.

Now, as I told you at the beginning, I thought it was useful to refer very quickly to the DSA. It's one very particular amendment that the rapporteur of the DSA has included there. Next slide, please.

So in her draft report, she included a recital which is about traceability of business users. In other words, the know your business customer idea. That was already in the DSA before by the commission originally, but the idea there was that it would apply to online platforms. So the rapporteur suggest that this should be expanded to everyone, all the intermediary services under the scope of the DSA, and that would include the registries and registrars.

If that was to go forward, that would mean that before a registry or a registrar gives a domain name to a requestor, they would have to collect their credit card, their ID and a set of other information to verify that and then go ahead with giving the domain name. In the next two slides, I have copy pasted that proposal, that specific article, that's for your reference, but I thought I should mention as well because—a significance here, and it also sounds like the “verified” word that they added in the NIS2, depending on which direction it'll take. That's it from me. Please let me know if you have any questions or you want to discuss something particular, I'd be very happy to.

MASON COLE: Thank you very much, Elena, for that presentation. We appreciate you spending some time with us today. I'm happy to take a queue from BC members for questions or comments for Elena. I know this is an issue that many of us have been following closely. So please speak up with your questions or comments.

Nothing in the queue so far. Elena, you may be getting off easy today.

ELENA PLEXIDA: Well, what I understand is, of the biggest concerns for you is the legitimate access seekers thing, which I expected, of course.

MASON COLE: There is a question in the chat from Margie about the timeline for the DSA development. Can you comment on what that timeline might be?

ELENA PLEXIDA: Yes, absolutely. That's going to take longer, of course, because it's a more difficult piece of legislation and it's highly politicized. The Council is again slower than the parliament. The parliament is at the stage where they are looking into the more than 1000 amendments that were submitted, and I'm not aware of whether they've set a date for the final vote, which means that they're nowhere near that.

the only thing we know more specifically is the commission is pushing them to finish with the whole thing before the next mandate comes in.

MASON COLE: Okay. Very good. Drew Bennett, go ahead, please.

DREW BENNETT: You mentioned about we have some intelligence on what's happening with the parliamentary committees in terms of for example the narrowing of the legitimate access seekers definition, and then you mentioned we don't have anything from the Council side. I'm wondering, though, on legislation like this, on this level of technicality I guess, for lack of a better term, how likely is it that we're going to have much from the Council on a point like that, and how likely is it that there's going to be opportunity to even shape things after the final report from ITRE committee comes out as we head to first reading and then Council after that? It just kind of seems to me that they're going to play more of a rubber stamp role on what comes from the committee and Parliament, but I'd be happy to be corrected on that.

ELENA PLEXIDA: Yeah, no, that's an excellent question. The basic answer is it depends. I know it's not very specific. Once the Parliament is finished with their positions and they get the final vote, which they intend to do end of October, it means that within the Parliament, the discussions are done. On the Council side, since they're still examining Article 23—frankly many people told me it is under construction still when it comes to the Council. There's still a chance that people will look at that and my proposed things.

Now, the next opening for changes is when the two are entering into negotiation, because then Parliament comes with their proposals,

Council comes with theirs, but it's a whole new slate so everything is again on the table to be discussed.

Frankly, the problem here is that some people, as I said before, believe that Article 23 has no place in NIS2 and it has nothing to do with cybersecurity, that it should be better placed in the DSA. Actually, if it was in the regulation, it would make much more sense. That is true. But I don't think that it is that much of an opposition that will end up to deletion of Article 23.

Now, that said, although there is not a formal period of public comments as there was when NIS2 was out, that doesn't mean that one cannot reach out and cannot have discussions with both the parliament and Council if they wish to make some point.

DREW BENNETT:

Thank you. And just quickly on clarity, mentioning the potential for some parties kind of pushing for Article 23 to be in the DSA and then you said if it was in the regulation, it would make more sense. Meaning, so you're kind of saying that because the DSA is a regulation, that argument doesn't hold as much water?

ELENA PLEXIDA:

No, I was just saying that it would make more sense from practical perspective to have such a thing in a regulation. So something that would apply automatically after it was adopted instead of a directive that will have to go to 27 member states and you risk having 27 different ideas of some parts.

DREW BENNETT: I see. Yeah. Thank you.

MASON COLE: Thanks, Drew, for the question. Other questions or comments for Elena? All right, very good. Elena, thank you very much for taking time for the BC today. We appreciate your presentation and the update, and I hope that you'll be a guest for us again as NIS2 continues to develop.

ELENA PLEXIDA: Thank you. Thank you so much for having me. I'd be more than happy to. Or Mason, I can also just send you an e-mail once we have any significant development such as the final vote of the Parliament or stuff like that to share with the members.

MASON COLE: That would be very helpful, and you're welcome at the BC anytime. So thank you again for taking time for us today.

ELENA PLEXIDA: [inaudible] rest of the meeting. Bye.

MASON COLE: Okay. Take care. All right ladies and gentlemen. We're getting tight on time. I understand that Lawrence is not with us today, so we may have a bit of extra time for the policy discussion. And we only have till the top

of the hour. So Steve, let me turn the floor over to you in the interest of time. Go ahead, please.

STEVE DELBIANCO:

Thank you, Mason. On display is the policy calendar that I circulated yesterday. The only thing new in the last two weeks was that earlier this week, we put in a two-sentence response on proposed amendment five to the .name registry agreement. And in that response, we simply said that we supported the amendments, and I added that the BC is generally supportive of amendments to incorporate elements of the base registry agreement in the legacy gTLD agreements. So that's all we submitted and that's the end.

In terms of open public comments, there's two I wanted to draw to your attention. The first is a comment that closes over the weekend, and it's a report on the curative rights protections for international governmental organizations or IGOs. And these comments, as I said, close over the weekend. And Jay represents us on the expedited PDP.

I really wanted to thank Jay, Andy Abrams, Zak, Marie and Jimson who prepared the attached BC comment. It's called BC comment on IGO. It's just over four pages. It's extremely legalistic analysis, but it's very well written. I found that as a non-lawyer, I was able to learn a lot by reading their comments and particularly, I appreciate the way that Andy, Zak, Jay, Marie all went back and forth to try to reach a compromise that they were all comfortable with.

I also told them that it was not necessary to adhere to the August of 19 position on this from the BC, because when members are aware of a

rationale and drafters who want to adjust prior BC positions, it's perfectly fine to do that. It just has to be well justified. And my job is to make sure all of you are aware that there's been an adjustment to the BC position on the way in which an IGO would avail themselves of courts and how the courts would look at their claims.

So I wanted to give Andy, Jay, Zak, Marie, Jimson, if any of you who'd like to discuss what is in the comment or have me display it for further BC review. It was circulated a few days ago, so the BC members have had it in their hands.

All right, seeing nothing, I'll just thank you again for that. We'll submit it on the 24th. Keep an eye on the e-mails over the weekend just in case a BC member has a comment or two.

The second one up is on the draft operating plan and budgets for PTI and IANA. Those comments close the 25th. And I want to thank Tim Smith, Lawrence and the finance committee. And we did circulate a draft yesterday when I circulated that. I think Lawrence has a few comments on that draft. Tim, you or others want to make any observations on what you've got in there? [inaudible] asked for input from BC members.

TIM SMITH:

Hi. Thanks, Steve. I think what you submitted were my initial observations that I submitted about a week and a half ago for comments by other members of the finance committee. I did have a note from Lawrence overnight—my overnight—where he said that he was going to do some drafting. But I haven't seen his comment at this

point, nor have I seen anything from other members of the committee. So these are basically my observations that I posed to the committee to see if these were areas that we wanted to comment on.

So depending on what comes back from Lawrence or other members of the committee or other members of the BC, this is kind of the framework of our comment at this point.

STEVE DELBIANCO:

Thanks, Tim. It's due in four days, so I wanted to make sure BC members had it in time to review it. That's why I sent around the draft that you initially gave. If you make any adjustments based on finance committee or Lawrence's input, let me know right away and I'll circulate an update to BC members even if it's over the weekend.

TIM SMITH:

Will do. Happy to take the lead on that once I have more input.

STEVE DELBIANCO:

Thank you, Tim. Next up is NIS2 and European Parliament and committees. We've just had about a 20-minute discussion of that. And Drew Bennett, give you an opportunity to sort of translate what you heard from Elena Plexida and ICANN and what you think we need to do at this point. I have it on the screen, and the floor is yours.

DREW BENNETT:

Sure. I think it was good for those tracking what Elena was saying. You got a sense of some of the movement still happening at the community level at the parliament. Frankly, most of it good, but a key point there that we discussed that's narrowing and not to our favor. And that's my question I tried to kind of get at, continued opportunity though to engage with not just Parliament but also Council on that point and some others, should we choose. And I don't want to take too much time here, but I think one thing I hope came out is that there is still, I guess, a wider can of worms that there is a danger of opening here.

So I think the strategic challenge for us going forward is productive engagement on points like the definition of legitimate access seekers while not ceding any of the many gains we have, starting from the fact that there is Article 23 in this directive. And I think that's what we'll be working on in the coming months.

I do think—and we'll consult further some of the folks who are closer to this. And by the way, let me know if you want to be on an e-mail thread that we have on it. But I do think that particularly from BC members who are European nationals or whose companies are Europe-based and have opportunity to engage with particular Council members representing certain countries, that I think it would be productive for us to help them understand I guess the power of an expanded definition of legitimate access seekers among possibly some other points.

So we have talking points along those lines and some ... yeah, just readymade text for people who want to help with that. So please reach out to me if you want to be a part of it, but that's kind of basically what we're working on now.

STEVE DELBIANCO:

And there's also the issue I've highlighted here about what will satisfy the requirement for verification of information. If all they have to do is to indicate that the e-mail address is properly constructed, that really doesn't get to anywhere near the accuracy we had in mind.

All right, any other questions for Drew or others that are working on the NIS2? Okay, thank you very much. So I'll move on to the next one, which is Council. We have a Council meeting coming up on the 27th of October, and the agenda and documents for the first part which is where the business will be done are linked there. And I've pulled out the three agenda items that I figured Mark and Marie would want to discuss. So I will turn it over to you, Mark Datysgeld, because Marie is not with us today.

MARK DATYSGELD:

Thank you, Steve. Hello everyone. I'll try to make this as brief as possible. So concerning the previous GNSO meeting, we have new statements as to what are desired characteristics of people appointed to do GNSO as external parties, and the consensus used to be that the person needs to ideally not be affiliated to an SO/AC. That has been the way the discussion has been going. I [can] say I agree fully with this because it creates a whole problem of who exactly is going to be that person who is incredibly versed in ICANN but is not affiliated. But that seems to be the way the direction seems to be going. We'll still discuss this on the upcoming GNSO Council meeting during ICANN, so stay tuned for that one.

STEVE DELBIANCO: Mark, could you clarify, were you talking about item five on the agenda for next week?

MARK DATYSGELD: That is correct, yes.

STEVE DELBIANCO: Well, that's the councilors themselves. Are you suggesting the councilors would no longer be members of the constituencies?

MARK DATYSGELD: Not the Council as a whole. The ones that are appointed.

STEVE DELBIANCO: [Yes, I get it, the appointees.]

MARK DATYSGELD: To fill the non-SO/AC positions, which right now would be Olga Cavalli and Tom Dale.

STEVE DELBIANCO: So that's NomCom.

MARK DATYSGELD:

Yeah, pretty much. But we'll still discuss that more, but Steve has attached it, there is a tentative document there. We also have [set to be discussed] UDRP policy status report. So a PSR is basically a review or an assessment of how an implemented policy has been doing. And in terms of the UDRP, it serves two purposes right now. This is both in order for the RPMs working group to continue doing the work on the subject which currently is let's say a little bit stalled. But to us in particular, this is interesting because of the following: they want to address how well UDRP has been efficient, fair and particularly point three, how it has bene addressing abuse or how well it has been addressing abuse.

So that's an interesting point for us to try to align with our DNS abuse working group and our broader efforts. So this will be introduced as a topic during the ICANN GNSO Council meeting next week, and then it'll become a public comment. So if anybody wants to get more involved in that particular process, get in touch with me or Marie and we can get started on that. Otherwise, we will just focus on trying to relay the best information available to you.

As far as EPDP is concerned, I'm not your guy there, so feel free to ask Steve for any burning questions.

STEVE DELBIANCO:

Item four is your vote, so on the 27th, you and Marie will vote on the EPDP final report. I've put a link to the motion, which I don't really know if it has changed since two weeks ago. And I recounted that it looks like I alone had suggested we vote yes but there were five people that thought we should vote no. there haven't been any e-mail discussions

about that. Margie is on the line, and I guess that unless anybody wants to delve into it further, the BC's position to you and Marie would be to vote no. It's a protest vote of sorts. And Margie, I think we need to give Marie and Mark a paragraph of what they would say when they explain why the BC is voting no. We need to get that into the BC private list so that all the members can see it, and then Marie and Mark can deliver it when they vote no next week, if that's the current position. I see a hand up. Go ahead, Margie.

MARGIE MILAM:

Hi everyone. Yes, that's correct. I have a draft. I circulated it with Mark SV yesterday to confirm that he's okay with it. He's okay with it, so I'll send it right after this call. And the BC can take a look at it. It basically tracks the minority statement that we submitted in the EPDP report. So I would be looking forward to comments on that, and then I think our councilors will have what they need to vote now.

STEVE DELBIANCO:

Thanks, Margie. Any other BC members want to weigh in one way or the other? Okay, thank you. Look forward to seeing that, Margie. Next up, Waudo, want to discuss some of the CSG liaison work that you're doing?

WAUDO SIGANGA:

Thank you, Steve. First of all, Steve, thank you for putting the link to the schedule for the ICANN 72. Just a reminder that one has to register to participate in the sessions for the virtual annual meeting.

Then just a report on what has happened. A few days back, the CSG held a meeting with the GAC Public Safety Working Group. The main issues discussed included domain name registration data and the domain name abuse.

Just a few takeaways that are important to the BC. One was the need for an improvement in the registry and registrar agreements to mitigate DNS abuse and make effective compliance. The BC would like greater cooperation from ICANN in bringing about changes to the agreements that will impact DNS abuse. There's a recent Interisle report on phishing which has indicated the heightened nature of DNS abuse, and attention should be drawn to the concentration of abuse in specific registries and registrars.

ICANN Compliance has also indicated that they can do a better job if they have contract provisions that they can enforce and therefore ways should be explored to get those contract changes without necessarily going through a PDP route which as we all know can be quite onerous.

The second takeaway is that the BC would also like to leverage on the impending new round to factor in changes to the registry agreements that will make registries more accountable for DNS abuse in their domains.

And then finally, the BC is concerned that ICANN appears to have abrogated its responsibility and role as representative of the community when it comes to negotiations, especially with the contracted parties. So that's one event that we've held.

Upcoming sessions, the CSG will have an engagement with the full Board during ICANN 72. That'll be next Monday, October 25th. I believe it'll be 23:30 UTC. Of course, we are going to send out a reminder on e-mail for those who would like to participate.

We have lined up two main areas that we'd like to engage the Board on. The first one is that we'd like to Board to provide input or comments on how it thinks we could efficiently identify and work more closely with governments globally as well as educate, train and interact when it comes to geopolitical issues relating to ICANN's mission. We think this fits in quite well maybe with the presentation that we just had from Elena. I think that's one good example about how ICANN should interact with the international community, including governments and the IGOs.

The second main topic that we'd like to discuss with the Board is regarding incomplete implementation and/or nonapproval of recommendations from previous reviews. For example, the CCT RT, the ATRT3 and the SSR2. The CSG is concerned about high level of recommendations that have not been delivered to the Board or rather the high level of recommendations that have been delivered to the Board and are either not yet approved or not implemented.

With respect to those recommendations that have been approved, we are unclear about the timeline for the implementation and what oversight role the Board [inaudible] for itself in implementation of approved recommendations, including the prioritization process.

Moreover, we think the entire community would benefit from being given a clear understanding as to how recommendations are being

prioritized, which particular recommendations are being prioritized and what the anticipated timeline is for implementation of those recommendations and who's responsible from ICANN Org for leading the work on implementation of particular recommendations.

So those two main areas are the ones that we shall engage the Board on. The way we shall arrange that particular meeting, I think every constituency will have a chance to field questions to the Board. So we're inviting any specific questions from the membership of BC to present at that particular meeting, and we'll look forward to what the Board has to say about the questions that we present to them.

So I think that is all I have about ICANN 72. Maybe as I hand back to you, Steve, there is an engagement you recently had with ALAC on behalf of the CSG, and I think the main thrust of that engagement was the ATRT3. So as I hand back to you, if you have something that you'd like to report that would be of interest to the BC members, I would invite you to do so. Thank you.

STEVE DELBIANCO:

Thank you, Waudu. So yesterday, we spent two hours at the invitation of the ALAC accountability and review session. So this was an ALAC session. It was heavily attended because they endeavored to have somebody from every AC and SO to be on there to discuss what they felt about ATRT3 and the recommendations to sunset certain reviews and to go do a holistic review.

I had a three-minute presentation. It is attached, called ALAC session remarks. And in it, I recounted what the CSG minority statement said

last May regarding the ATRT3 recommendations. I recounted how the BC and the CSG in general had lost voting power in the 2009 restructuring from the Board and how we had relished the opportunity to do independent specific reviews as a result of the affirmation of commitments in 2009 and that that is why we brought them into the bylaws in the 2016 IANA transition.

That led me to conclude that the BC, IPC and ISPs were really reluctant to see those reviews ditched by the ATRT3 recommendations. I went on and had a debate against Patrick Kane of Verisign—who was one of the co-chairs of ATRT3—on the scope of what the holistic review could look at, because I suggested that GNSO was ignoring what GAC, ALAC and SSAD had to say on EPDP. So the holistic review ought to look at the way in which those three important ACs interact with GNSO on policy development. I also suggested that there ought to be additional Board seats for the GNSO.

That was a lively debate. You can tune in and take a look at the session remarks. I'd be happy to answer any questions. That is all we have. Mason, back to you.

MASON COLE:

Thanks very much, Steve. Members, any questions or follow-up for Steve on the policy report? All right. Since we don't have Lawrence with us today and Tim has already dropped off the call, we're going to skip agenda item five and I will call for Any Other Business to cover before we adjourn. Any Other Business for the BC this morning?

All right, that means we're going to end right on time. So with thanks to Brenda for her support and for everyone for attending, I'll just point out that our next BC meeting is actually going to be an open meeting on 26 October during ICANN 72. That is next Tuesday. And I encourage you to be there. We're going to have another guest from Interisle that's going to discuss the findings of their latest report on phishing. So that's going to be very informative in terms of our discussion on DNS abuse, and I encourage you to attend.

So good luck next week. I'll see many of you online at ICANN 72. And with that, the BC is adjourned. Thanks, everybody.

[END OF TRANSCRIPTION]