
BRFENDA BREWER: Good day, everyone. Welcome to the BC membership call on the 7th of October 2021 at 15:00 UTC.

Today's meeting is recorded. Kindly state your name when speaking for the record and have your phones and microphones on mute when not speaking. Attendance is taken from Zoom participation. And with that, I'll turn the meeting over to Mason. Thank you.

MASON COLE: Thank you very much, Brenda. Good morning, good afternoon, good evening, everyone. It's good to have everyone on the call today. A special welcome to our guests, Göran Marby and Matthew Shears. Thank you all very much for making time, especially Göran, early in the morning for you. Appreciate very much the two of you joining us.

We're going to devote the first 45 minutes of the meeting to our discussion with Göran and Matthew, and then we'll carry on with our usual agenda. Brenda has usefully, as always, put the agenda on the page or on the screen with our initial topics that we'd like to cover with Göran and Matthew, and then we'll proceed on that basis.

Before we do that, Göran, Matthew, anything that you'd like to say to open up the discussion?

GÖRAN MARBY: Matthew, do you want to say something?

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MATTHEW SHEARS: Just thanks for inviting us. I think it's always good for us to meet like this. And let me just add that I may have to drop for a moment because I have an alarm company service that's going on. I'm hoping the alarm won't go off while we're on our call. Just so you know. But I'll be right back if it happens.

MASON COLE: All right. Thank you. If we hear the alarm, we will not be alarmed.

GÖRAN MARBY: Thank you, Mason. Thank you for inviting us. And as we talked about when we decided to have this call, let's have a dialog, because ... So I think that we need more dialogue. And I don't have answers to all the questions in the world and I think that you don't have all the answers to any questions. That's a dialog for better understanding.

On that note, I have a suggestion, by the way. Because it's much nicer when we can see each other, would it be possible, Brenda, if you take the questions and post them in the chat, get rid of the PowerPoint so we actually can see each other? I think that would be beneficial. It gives a little bit more interaction despite the fact—oh, that's beautiful. Thank you very much.

I can see Steve now, and Lawrence. Hi. Anyway, my friends—and Barbara. Now we're getting there. It was not to force you to be on video, but it's nice. I miss meeting you guys. So, is it okay, Mason—I read the questions and we have some answers, but one of the things that occurred to me when I read my own answer is I would like to—

because question is always formulated in such a way that you want a specific piece of information as an answer. The problem is I don't always understand why you're asking the question. I can imagine why you're asking the question, but I might not understand the reasoning behind the question.

So if I start by asking the question when it comes to the PICs by asking you, what is the problem that you're trying to solve, and what is your perfect outcome of what you want to do, is that a fair question? I think I understand why you asked the question, I don't have any problem answering. [inaudible] understanding what is your dream solution for the discussion about the PICs, because that, I can only imagine, not knowing.

And if you say we don't have the perfect outcome of it, we want to discuss it, that's fair. But is it okay if I ask that question to you?

MASON COLE: Sure.

GÖRAN MARBY: What is your perfect outcome of the PIC discussion?

MASON COLE: Sure. I think that's fair if you'd like to approach it that way. Lawrence, can I turn it over to you for opening up that part of the discussion, please? We may have a frozen Lawrence.

STEVE DELBIANCO:

Yeah, while Lawrence is working on that, I might offer this, Göran. The BC was a big supporter of the public interest commitments in the last round, and it was your predecessor who spotted the logic. When we came to Fadi and said, “You know what? These applicants in the round, they made a lot of promises.”

Some promises, they made to the governments to get them to remove their objections. And those promises are not necessarily enforceable, because they weren’t in the contract. The second were commitments that were made by the registry in order to increase its chances of winning, particularly in a competitive situation, and those commitments were not enforceable unless they made their way into the contract.

And then there became a general set of commitments with regards to security that the GAC advanced, and those would be called the general public interest commitments.

So the BC was a big fan of saying that ICANN Org only does two things: it helps develop policies and it enforces policies in contracts, and that if we relied upon promises, we would need to be able to have an enforceable means to hold a registry to those promises. So it has to make its way into the contract, and that is why public interest commitments were so important to the BC. And if somebody offers a voluntary commitment and it’s informative as to whether they win the TLD, well, then they have to be able to be held to that in some way because it’s no longer voluntary once they win the registry contract in the next round.

Lawrence, if you can hear and if that doesn't accurately reflect our best-case scenario, please speak up, or any other BC members.

MASON COLE:

Lawrence, anything to add by Göran and Matthew tackle that question? We may be having some trouble with Lawrence's connection, so Brenda, maybe you could help out with that if you don't mind, with a callout if necessary. But let me turn the floor over to Göran and Matthew. Would you like to open?

GÖRAN MARBY:

I'll start, and Matthew can add on. So a lot of the discussion about the PICs comes from a question that the Board asked the PDP about PICs, which is a general question which was, how do you deal with PICs that are outside ICANN's mission? I'm paraphrasing it, making it shorter. And the Board has asked the question. It's not like the Board has decided how to handle it, but sought the community's input and especially the PDP's input on that question.

Because it's ... ICANN's mission, which you all have been a part of writing, some people call it limited. I call it focused. And you know better than I do that there is a balance discussion also in the community about what some people call mission creep. If you add things into the PICs which is not inside our mission, what is the opportunity for ICANN then through Compliance to enforce it, regardless if it's in the contracts or not?

It's an interesting philosophical question. And to point out, I don't have the answer to the question. It's not like I'm going to tell you now there's an outcome of this discussion. But theoretically, it's an interesting discussion. If something is not in the bylaws for us to do and [it's set in a] contract, is it enforceable by ICANN Compliance for instance?

STEVE DELBIANCO: Göran, can I respond to that?

GÖRAN MARBY: Yeah, of course.

STEVE DELBIANCO: Let's just pick an example. Let's suppose that somebody looked for .bank and a bunch of governments objected saying that we're not going to allow .bank unless there are promises made about only chartered financial institutions being allowed to be a registrant. And then you end up with a rather sensible, provable means of knowing whether non-eligible registrants were able to get a .bank name. And it feels like it fits into not security and stability but it does fit into fraud prevention and consumer protection. That's outside of ICANN's focus.

And I realize that that round occurred before we updated the bylaws, but we do today enforce whether .bank is honoring their commitments to registrant verification. In other words, if they weren't, that complaint would make its way to ICANN Org, either from the government or by victims of fraud.

So we are already enforcing contract terms that are not part of ICANN's mission. Are you proposing maybe we'd not be doing that in the future?

GÖRAN MARBY:

Steve, now you're doing exactly what I asked you not to do. I said that I'm raising some of the discussions we're having. Please, Steve. And I said I don't have answers to the questions. But going back to why the Board actually asked a question to the PDP. Please, Steve, I know that you love to debate with me, and I have no problems debating, but this time, I'm not here to debate. Is that okay?

STEVE DELBIANCO:

Sure, and then you can just use the .bank example to answer the Board's question so that they can respond to that. Because I think the question answers itself when you give a couple of examples.

GÖRAN MARBY:

First of all, we are not in the process of doing anything right now. Just as you know. The PICs have been grandfathered into the ICANN bylaws. So it's not like we are out doing something right now. But I'm adding to why the Board asked the questions so you have an understanding.

Because one of the interesting thing is—we use .bank—is that bank is an English word in Latin script. And of course, it has different meanings in other languages. That is one of the things that causes a commotion, because we often look at it from a Latin script and English perspective.

Let's take .books as another example. The language problem is one of them. The second one is that it could be—I often use the word sisu as an example, which you all know what it means, doesn't it? SisU is one of my favorite words. It's Finnish. SisU means a strong person. To say to someone in Finland that they have SisU is the greatest compliment you can ever give to anyone out of Finland.

It's very restrictive to the usage in Finland. By the way, it's trademarked in the US by a company that's doing something. And the problem there arises that I'm the first one to agree that there might be words that shouldn't be put into a top-level domain, not for commercial reasons but for other reasons, to prevent trafficking, to prevent drugs. That's my personal belief, by the way.

The problem is that when you make it a little bit more multidimensional by adding the fact that we have, what is it, 6000 languages in the world, and most of the TLDs, as you've seen today, have been actually in relationship to English.

The other thing that is also—we are not doing anything. You ask me questions and I would rather have a dialogue so you can think about it—is that you have trademark laws. If you take the closed generic discussion in general—I have a feeling sometimes that you're interested in trademark laws. Is that correct?

No one is nodding, but I have a presumption that trademarks are important. Which, they are important for us as well. With us, I mean ICANN Org and the Board.

What happens if someone has trademarked as something? And now you're going to say, "But there are trademarks for different things." But there are international conventions about trademark laws. There's no international trademark laws but rather conventions. What happens if we build an alternative to trademark laws by PICs and closed generics, acronyms and stuff? That I think is a balance we have to continue to talk about.

And I don't have answers to all those questions. I'm saying that this is why the Board asked the question, without having done anything, really, just really a conversation to be held and especially to be held by the community.

The first thing I just want to mention is that, is a top-level domain a monopoly or not? There are theoretically people who think that a top-level domain is a monopoly in the sense that if a customer goes into a top-level domain, you are belonging to that top-level domain. The .com, the .org, something.

And if through a PIC, someone has made a promise to—what a PIC often is is a two-sided promise. One part of the promise is that [inaudible] made a promise to colleagues in the top-level domain space saying that we're going to utilize the top-level domain for this particular thing. Which means that if they say to other competitors in the market saying that, "Okay, I'm going to limit the use of getting this top-level domain by not increasing the competition about something, because some reason."

The other thing is they also make a promise to their—or for security issues, like .bank, which is an English word and has a special meaning in English and some other Latin scripts. Doesn't always mean the same thing around the world.

So they also make a promise to their customers. Take .gay, one of my favorite examples of top-level domains, is that most of the promises they make are to their own customers. What happens if they don't fulfill their obligations to those customers? What is ICANN's part in that? And the worst thing is they don't actually fulfill their obligation to their own customers. I'm not saying .gay is doing that, because I think they do a good job.

It's just that some of the PICs are against their own customers. And if you think that the .gay or any other top-level domain is a monopoly, you also say that customers cannot move into another top-level domain.

If I choose a top-level domain because the top-level domain has a special way of doing things, and I realize they don't, I'll probably move my top-level domain—my domain name.

So you use .bank as an example and you talk about this from the security standpoint. Which we don't disagree with. We don't want to fool customers. But the question is also, there is a variety of questions when it comes to PICs.

The only thing the Board [inaudible] ask the question, how do we handle the situation where if it's outside our mission? [When we haven't—]there's no real answers to the questions yet. It's

grandfathered into our bylaws, they didn't include it from the 2012 so we are not really doing anything, but I think it's fair to ask the question.

I used the PICs in .amazon if you remember. It was one of the ways that we were able to utilize to end the process, which I think was problematic from the beginning.

This is a conversation. Matthew, please.

MATTHEW SHEARS:

Yeah, maybe I can just jump in a little bit here. I think from the Board's perspective, one of the concerns was really around enforceability of the PICs or RVCs. It was really around the issue of, how do we ensure that there is an objective way to determine compliance? How do we figure out, do we have the tools to enforce them? There's an assumption that the working group made that these RVCs are enforceable.

So there was some concern in the Board as to how do we ensure that they are enforceable, how do we ensure that they're within the bylaws, is there a way of achieving a level of clarity with the RVCs so that it's clear what enforcement and compliance role is and the capabilities are, and it's not about content?

So it was really the broader question that came up was, what do we do about these and how do we make sure that we are able to enforce them? And that's really where this question about how do we take this discussion point forward arose from.

So I think it was really a broader issue around how do we ensure that we remain within the construct of the bylaws, and how do we ensure

that we can enforce these RVCs? And that was the genesis of the question that we put to the community. I hope that helps a little bit.

STEVE DELBIANCO:

It kind of does. It would seem to us that the ultimate enforcement power would be to revoke somebody's—hold them in breach of their contract. And that has a set of cure obligations and ultimately could result in them losing the registry or a registrar losing their accreditation. That's a pretty powerful incentive.

So ultimately, you do have an enforceable power. But I share your concern, how do you figure out whether a registrar and registry are honoring their contracts, unless they respond to a query, an investigation that you began? And it may actually require greater resources in Göran's hands to do an investigation of a complaint if it involves the contract that enabled them to be a registrar and sell names or the contract that enabled them to run a TLD, the one that you awarded with a registry contract. And I think you do have the power to hold them to that contract and the words that are in the contract.

And we know that we grandfathered the old PICs, and maybe we need to talk about what that means for the next round of PICs that make their way into the next round of contracts. Does the grandfathering imply that we can no longer do PICs in new contracts? If that's the conclusion that Legal comes to, we'd want to make sure and tell everybody in the community and figure out what to do about that.

GÖRAN MARBY:

Again, we don't know. I'm honestly saying that a lot of those questions—first of all, we would never—and you know this by now, is that if we [were to reach a] conclusion somewhere in the Operational Design Phase or anything else regarding this, we would definitely go back to the GNSO and ask specific questions. That's one of the reasons why we set up the ODP, to have this mechanism to go back to the GNSO and ask questions.

Because one thing—I actually remember you and me in Copenhagen, 2016, Steve, when I took you up to a room and showed you what we called the hubba hubba project which was where we tried to nail down the processes leading up to a policy decision, which is still something that—I still use that mythology. You said that there were a lot of things that were not covered in there. And I said, yeah, we know that, but at least it's not a detailed map but there is a map.

And one of the things you gave me as an example—and the reason I know it is because I actually took a note of it after you said that, take a look when we did the last round, because what happened was many people in the community—and I'm paraphrasing what you said, Steve—didn't like that non-transparency after the Board made the decision leading up to the applicant guidebook, which I didn't have a clue what you talked about at the time, but you were right.

One of the reasons why we're doing the ODP is to make sure that it becomes more transparent why the Board makes a decision and create that mechanism. [inaudible] many times, we debate to poor Jamie and Compliance, but we've been saying for two years that yes, there are

rules that we can utilize when it comes to—and we've written papers about it and we've made blogs about it.

Take the fact that we have contracted parties who don't pay their bills. We know that [our bank—we know that they're not going to take it,] but it still takes us two years to get rid of them, to be honest, because you in the community have set up a process that makes it, in practice, really hard. And this one was a simple one.

Or take what happened in India. That was a little bit special because the courts in India didn't want to respect their own Indian customers, but the most important tool for Compliance is actually to have tools, because now we have soft, soft, soft, and a hard one. And we have said for a long time—[inaudible] we would like to engage with the community about—is actually the tools that Compliance has. Good discussion, by the way.

STEVE DELBIANCO:

Yeah, and I could follow up on that and eliminate my need to intervene next, because if you felt that Org needed a couple of tweaks to the contracts, the RAA and the [inaudible] baser agreements, if you felt you needed some tweaks to them so that you had a more smooth transition from investigate and then gradually more enforcement—responding to just the example you raised—then that would lead potentially to where Org might exercise its ability to kick off a round of contract renegotiations with the contracted parties.

And if you were to do that, I was going to ask how Org would want to discover what were the priorities of the broader community before you

entered that room as the representative of the community sitting down with contracted parties.

GÖRAN MARBY:

I love you, Steve. I do. it's so fun. So first of all, we have said, [publicly hopefully,] and I think we actually sent material to you guys a long time ago about this, but I also do believe that in a multi-stakeholder, bottom-up process, a lot of those discussions should be handles within the community, because I know that you will disagree with me—Steve, that's fine. It's just that I happen to believe so much in the multi-stakeholder model, so I rather have the multi-stakeholder model to have those discussions instead of me going in to do contractual changes.

I think when I look at the contractual changes, that has been done directly without the policy making process in-between [inaudible] has not given everybody what they wanted in any way.

So on the first point, I do actually agree that there should be great transparency, but I actually think the transparency belongs to the multi-stakeholder model. I would be remiss in my job if I didn't believe in the model I'm supposed to be here to protect.

I know—and Steve, [now you know] that's the difference between me and my predecessor. You can judge me if I'm right or wrong. But I fully believe that a lot of these things should come out of discussions within the GNSO. But that's a fundamental view I have.

Anyway, I know that Lawrence, maybe this was not the complete answer to your questions when it came about PICs, and I don't know if that actually helped you in any way, but that's the reason why the Board—and thank you, Matthew, for adding on to it—we care about the PICs and its enforceability and the potential for us to do something about it, because none of us want to create the PICs as smokescreens that a top-level domain operator used [inaudible] and there's no interaction. So we just have to make it better.

And we can also discuss things like closed generics and stuff right now, because at one point—I'd actually like to talk to you guys because one thing—I'm not saying that we're going to do anything about [inaudible] one thing that I'd like to hear at one point—not now, because you have other questions—is, how do you see things like closed generics and all of that versus when it comes to trademark laws? Because I asked the GAC the same question.

If you post certain names on a list, or acronyms, from the NGOs on one side and that is a contradiction with trademark laws, how should ICANN actually handle those things? But let's go back to that one. Maybe you can invite me again.

MASON COLE: You can definitely be invited again. Before we leave that topic, Matthew, anything you'd like to add?

MATTHEW SHEARS: No, I think we covered it well.

MASON COLE: Steve, are we good to move on? Okay, very good. I think Lawrence is back on the line. Lawrence, would you like to introduce topic number two, please?

LAWRENCE OLAWALE ROBERTS: Thank you, Mason. And thanks, Göran, for your contributions. They were indeed helpful. As a follow-up, we'd like to find out—well, as you know, the European Union's NIS2 directive will be delivered soon, and there would definitely be an impact on registration data availability and accuracy. So I just want to know, what does ICANN Org anticipate needing to do to bring the EPDP process into line with the directive? Particularly as it relates to availability and accuracy. [Sorry, it appears I'm on a call while we're on a call.] So please feel free to speak with regards to what we should expect going forward, especially with the EPDP policy.

GÖRAN MARBY: Yeah. The policy [starting work][inaudible] so my job is to support them. But there's one thing when it comes to the accuracy that I really want to make sure that I can reiterate. ICANN Compliance has the same ability or disability to check accuracy as everybody else. Which means that we have to ask permission from the contracted party to actually get access to the data, but we don't have a special avenue for that.

We have asked the European Commission and the European Parliament to change that, because we think that the ability for data accuracy is

important, nobody thinks that's not important, but it's a catch 22. And they've said no. the European Commission have said that they don't want to violate [inaudible] GDPR to give us special treatment when it comes to the ability to check the undisclosed data in GDPR.

Remember, here we are talking to another part of the European Commission, not DG CONNECT. We are talking to the ones who are actually much more involved in the legal interpretation of GDPR. Basically, they don't think SSAD or the accuracy of WHOIS is important enough [inaudible] balance for GDPR. I don't know how it is in your countries, but sometimes different parts of government don't talk to each other or even agree. Maybe that happens even in the US and UK. I don't know. It's definitely the same way in Sweden.

So it is a problem for us, the fact that to some extent, regardless of what the policy comes up with, if GDPR is adopted in the way it is, we can't check the accuracy and they're not willing to change that. And I don't want to put it out there.

But the interesting thing is the NIS2 is sort of half-interesting in this. There is another legislation that comes around the corner that actually have a greater impact on this, and that is the Digital Services Act, which might turn everything on its edge, because the directive actually says—it's the basic strategy called you have to know your customer on the Internet, which anyone who's been investing in banks or who's been a part of the bank legislation around the world knows that the government should be able to go to any given bank and the bank has to know their customers. This prevents of course so-called black money

and illegal money around the world. And these are strong legislations in the US and Europe.

And now, what they're thinking about is actually putting that onto what we call contracted parties, registrars and registries. So that's not going to have any effect on the WHOIS system whatsoever, but it means that—so the WHOIS system is a public system. I'm saying things ow that you all know. It's a phonebook. It's not the customer data. The customer data is within the CRM systems of the contracted parties. That's where they know their customers.

The business model that exists today is that maybe they don't know enough about their customers anyway, even inside, but the WHOIS system is not the customer service system. So this would put a big demand on the quality and the amount of information they need to know about their customer for them to have that customer.

It also will give them—a bank today has to investigate their customers, because they have to pay fines if they don't investigate their customers. They have to do their own quality assurance of the data they have about the customers.

And it also says in the legislation that this should be available for intellectual property and copyright reasons as well, which means that if the—and I'm not a lawyer, and I'm simplifying a lot, but it means that if that theory goes through, the Digital Services Act will say contracted parties need to know there customers ad there will be a little bit of an open road for representatives of intellectual property and copyright to

be able to ask questions directly into the CRM system. And they have to answer.

That makes actually the WHOIS discussion turn on its head, because you know and I know that the WHOIS system is a telephone book that the registrant puts in the data. It's a completely different story to have information directly in from the customer management systems that contains the contracted parties.

So when it comes to the data accuracy scoping discussion, I think that we've been talking about this—if you want to, I can send my team from Europe to talk more about this with you guys as well. because I think when you look into the accuracy discussion, you should look into the Digital Services Act as well, because it could turn the whole discussion around from—because what you want is not the WHOIS data, what you and your client wants is the ability to know who's behind a domain name, and you really want to know more than would ever be in the WHOIS data. If you get access to this data somewhere else, the WHOIS might not be as important for you.

But you see, right now there's so many things happening. It's one thing that the accuracy discussion [inaudible]. The other thing is the NIS2, and I told you that we have proposed to the legislator that ICANN should have a better opportunity to change or check accuracy because we happen to think it's important. Unfortunately, legislator doesn't think it's important. But you also have the Digital Services Act coming out, which is going to be a major legislative proposal as well. So there's a little bit of the whole thinking around it.

I don't know if you added any more questions. Maybe you knew all of this and I told you anyway.

MASON COLE: Matthew, would you like to contribute on that?

MATTHEW SHEARS: Just to add in terms of NIS2, I may not be totally up to speed in terms of where things stand at the moment, but it's my understanding that there are significant diversity of views in terms of accuracy across the different opinions that are now being put in on NIS2, [inaudible] ones from the European Parliament for example [diverge from] removing the article entirely to considerably amending it. So it's a bit difficult to know where this is going when it comes to the accuracy issues specifically. I guess we'll see when those are accounted for in the next steps. Thanks.

MASON COLE: Thanks, Matthew. Lawrence, any follow-up?

LAWRENCE OLAWALE ROBERTS: No, that would be all from me. Thank you. I give the floor back to you, Mason.

GÖRAN MARBY: Maybe just one more thing I want to add to it is that I have for a long time been trying to figure out a way to have a better interaction with the whole community about legislative proposals or governmental

initiatives and all of those things, because what we're doing is conversations like this with different parts of the community, and it always creates a lot of questions.

I have proposed to the SOs and ACs that any given ICANN meeting should have a 90-minute session where ICANN Org with our teams and partners comes around to talk about geopolitical proposals, legislations around the world. Because we are not only talking about European ones. Some of you know that there are legislation proposals on the hill right now that can have an effect on ICANN's technical ability, etc.

And we want to be better—I have a really good team. If you've seen my goals, you've seen that the Board expanded [inaudible]. So I made the request that every ICANN meeting from now on, we should have a 90-minute session that we actually go on and talk about geopolitical things and also legislative proposals, so we can have a broader debate in the community.

And I feel that I've done my job, which is to provide you with the information that you need, because we actually are blessed to have a really good team with really good contacts in some of the powerhouses around the world, and we are often directly engaging with legislators and other ones around the world, and I want to have the ability to be more transparent about it.

So if you speak to—within the GNSO for instance and say that's a great idea, I would like that support.

MASON COLE: Very good. Thank you, Göran. Looks like Matthew had to step away for a moment. Any members want to raise their hands on this issue before we move forward?

GÖRAN MARBY: Question. Would you like, for instance, the Brussels team to come and talk to you about—or maybe you know everything about the Digital Services Act.

MASON COLE: No, we don't. Actually, it's funny you say that, Göran, because we are in touch with Elena for the possibility of having a briefing to the BC. So looks like we're thinking the same thing in that regard.

GÖRAN MARBY: At least I think when you look at the accuracy discussion, if you take away the tactics of being a member of a community group, I especially think that it would be interesting for you guys to look into the Digital Services Act.

ICANN as an institution only acts when we think that something will have an impact on ICANN's ability to make policy or it actually would prevent people to go online. The big area in-between there, taking sides in different interest groups, we can't do. But at least we can provide—which I've done—the context of what's happening, and then give the avenue for you guys to interact if you want to.

I'm glad that Matthew is back because the next question is really, I think my dear friend Matthew should answer holistically.

MASON COLE:

With that segue, Barbara, let me turn the floor over to you. Please go ahead.

BARBARA WANNER:

I don't frequently take the microphone or appear at the microphone in an ICANN meeting, so it's a pleasure to be able to speak with you this morning, Göran and Matthew. And to increase the angst on my side, I've got leaf blowers and carpet cleaners going. So the joys of working at home still. I apologize for the background noise is what I'm trying to say.

I'll cut to the chase here. You are keenly aware that the BC and our CSG colleagues are of the view that there should be an appropriate and fair representation of DNS users on both the GNSO Council and the ICANN Board. And we've expressed these concerns with respect to implementation of ATRT3 recommendations as well as the NomCom RIWG recommendation to redistribute NomCom seats.

We recently learned that the RIWG has rescinded that proposal and we're pleased by that decision. So that leaves the holistic review called for in the ATRT3. We are keen to see this taken in a timely manner. We feel that such analysis indeed would indicate an imbalance in stakeholder representation that may not be apparent at face value.

Importantly too, we feel it's critical we undertake this holistic review to enable appropriate scoping of the GNSO 3 review. Again, as you

probably know, we weren't very pleased with how the GNSO 2 review ended up, because we feel it perpetuated and exacerbated the imbalance.

Having said all of this, we appreciate and acknowledge that some of these issues may be addressed as part of the 12 October webinar on ICANN reviews, so we will certainly be participating in that webinar and possibly asking some of these same questions.

But we wanted to use this conversation with you today to highlight our concerns about the holistic review pilot being pushed out into the indefinite future owing to issues of prioritization and I guess resource constraints. We learned that via a recent e-mail via Xavier.

We would be grateful for any insights you can provide into whether ICANN would accommodate the holistic review as a matter of priority. We're basically telling you as a community member that we feel it should be a priority. So welcome your thoughts and those of my BC colleagues. Again, sincere thanks for joining us today and allowing me to speak with you. Thanks.

MATTHEW SHEARS:

Thanks, Barbara, and nice to see you again. This is a question that's come up a number of times over the past 9-12 months. So you've mentioned a number of the challenges we're facing. One of them is time, the other is resources.

We have and we agreed—I guess this is going back two years ago or so now—that we would put in place a process of prioritization for handling

the workload that's coming at us. As a part of that, that process of prioritization and of the framework within which items will be prioritized is underway. The challenge of course with that is that it means that—and that's a process, I should say, that the community will have and is having input into.

The challenge with that is that when it comes to things like ATRT3 is that it's in that bucket of items to be prioritized. In other words, going forward, we need the prioritization framework first to be able to prioritize what we do and what we implement next as we move forward once that framework is in place.

So there's a sequencing there, and I'm afraid I don't have a timeline for you to give you the specifics of, but perhaps that's something that will be revealed in the webinar.

There is absolutely no doubt—and I just want to be very clear on this—that the holistic review and the continuous improvement process are items that are in that bucket, because they've been agreed and they've been forwarded to the Board. These things will come forward.

As to when and how they do, that's a timeline that—maybe Göran has more info on what that timeline is—will become more apparent over the next six months, I believe, and then there'll be the process of sitting down with the community and understanding the items of work that we have before us and asking for help in prioritizing those elements.

So if certain pieces are incredibly important to you, such as moving to the holistic review, moving through the continuous improvement mechanisms, considering what the implications are for the next GNSO 3

review, then that time in that community, Org, Board process of prioritization, that's the time to bring that to the fore.

I think one of the issues here is going to be—and I'd have to go back and look at the ATRT3, but is what's the sequencing that they have anticipated. And the other thing to consider is that I believe that part of this prioritization process will probably launch as a pilot, because we need to make sure that we all agree on what that prioritization process looks like.

And so it will launch more likely as a pilot. It would allow Org and the community to come together and to understand what the mechanics are. and then we'll get into the process on an ongoing basis. And this will determine how we deal with reviews going forward.

So I know it doesn't really answer your question, but it's to say that the framework is underway. Once the framework is established, there'll be a pilot. Unclear what will comprise the pilot, but that's the opportunity to start engaging, participating in that community and Org and Board process of prioritization, and then taking those forward. And hopefully, that'll address some of your concern.

I know it doesn't give you a timeline, but I think it gives you a sense as to what the sequence is and how we get there. But because we committed to prioritizing everything, we are a bit stuck, if you will. We have to follow this process that we've now agreed upon. It's not that there's any kind of deliberate intent to delay or anything like that. It's largely timing, resources and the absolute imperative of prioritizing work. Hopefully that helps a little bit.

BARBARA WANNER: Okay, so just so I understand, it sounds like you're talking about a two-step process. The first step is to create a framework for determining priorities, and then the second step would be to actually receive feedback from the community on what they view as priorities? Did I understand the process correctly?

MATTHEW SHEARS: Yes. So there are other steps in there. So yes, it's developing the framework for prioritization with the input of the community, moving to a pilot of prioritization which would be a first step to make sure that it's working correctly and we're not going off on some tangent, and then moving to the prioritization process itself.

And that's when the community will have to come together and decide what is important. That's really the way we want—we do it this way because of resourcing, time management, and also to get a real sense from the community of what is most important to implement given the limited resources that we have. Göran, maybe you had more detail.

GÖRAN MARBY: There's a lot of questions about holistic from different parts of the community, and sometimes I wonder if there are different interpretations of what the word "holistic" actually means. Jokingly in the Org and the Board I said I don't really like the word "holistic." It's like many other words, net neutrality and anything else, because you

can agree on the concept but then actually having discussion on what it actually means, it's going to be something completely different.

With that said, as Matthew said, there is a process. My biggest problem—now speaking strictly as the ICANN CEO—that we are stretched to the seams right now, and you see that—if you can imagine the amount of work we are doing right now—and we try to do it transparently, openly, we try to have the discussions, and we also have to start making decisions about things, because look at it. We have SSAD, we still have Work Stream 2 implementation also [goes] back to the community, we have 250, whatever it is, 300 review recommendations. We do them [one by one,] but there's a lot of them.

We have SSR2, we have the next round, ODP, SSAD, auction proceed. We also have today business, and one of the mechanics of this, we can't start anything formally until the Board made a decision about starting something because it has to do with budget, transparency, rules and all of that. And we're doing this under COVID.

So I'm not complaining, because I have a really good team, really dedicated, and we've been lucky enough not to lose a lot of people during this period. But we are now really restarting a lot of those things that we need to do, because we don't—if you actually go and look at the ICANN—I think right now, we are looking for like 35 people or something, because we need to enhance and get more people into the ICANN Org. So it is a ramp up period for many things.

And what Matthew really talks about is that we have not, together with the community and the Board, been able to come up with good

prioritization mechanisms. You might say that we have not had any priority mechanisms. What the Board did—and I'll rephrase it—I [changed] my organization to set up someone who's responsible for prioritization.

We asked the Board—and Matthew, you should know how important Matthew is in all of this, because he actually shares the committee for prioritization within the Board, which is a substantial, important part of the Board's work. And now we're also reaching out to the SOs and ACs so we can start having the mechanics to set it right.

And this goes along with that. I know that there would be people who think that their project should be the most important project, and then you have other people who think other things. The brand people think that I should throw everything [overboard and only make sure] that I come up with an applicant guidebook so we can do the next round next week.

There will always be conflicting priorities. What we're trying to do now is be more open about it. But we actually talked about this, we're going through the internal budget. One thing that many people used to say to us, "You have too many people. Why do you have so many people?"

Now when I speak to the community, they usually say, "Are you hiring more people? You need more people, don't you?" Which is a watershed difference in my interaction with the community and the Board over the last 6 to 12 months, because the community and you realized we are lacking resources. But we're fixing it. But we are in COVID. To hire

[inaudible] talent in this period of time is [inaudible]. But I'm just complaining to you guys. I'm not trying to make excuses.

I know we're overtime. Can I spend two minutes about the SSAD?

MASON COLE: Yes, please.

GÖRAN MARBY: Funny enough, we are now in a situation which we predicted. Just to point to one of them and to give you a little bit of—we're going to have a seminar about this during the ICANN community—I'm going to give a little bit of overview.

We said from the beginning it's going to be problematic to find somebody who can actually build this, because no one has done this in the world before. And it's got nothing to do with legalities. It's just the technology of doing it.

So far, we've been speaking to 17 vendors, and they're all good. I'm not saying anything that they'll fail or anything. We've had really good conversations and they're not over yet. But so far, no one has been able to present the solution for the identification part in such a way that it actually works around the world.

So that is the problem. To build a ticketing system, that's not a big thing. When I started, I think we had 13 ticketing systems in ICANN, and now we're down to a couple of them, which is something that we saved a lot of money on. We know ticketing systems. Compliance gets 30-40,000

complaints every year. We have to have a ticketing system. That's not the problem. The big problem is the identification of the users the first time.

So we are continuing doing that, but we don't have the answer, and that's going to delay the time. I can't say the exact timeline that we're working on. So we decided to redo things because as the policy is written—and remember now, before you jump on me now, Steve, with all the love I'm saying this, I'm going to raise some questions. And it's not a gotcha moment where you can say, "Oh, that's what you intend to do." But just to give you a little bit of the [flavor of the thinking I do.]

So we have a rough estimate how this would be costed, between \$8-10 million. And then anyone who's built any IT system in the world knows that usually, if you pay \$10 million for something, it's going to cost \$2 million to maintain it every year. 20% is often the cost for maintaining something.

The policy says that the cost should be covered by the users. They don't define what the costs are and what the users are. So what we're going to do now based on the surveys we did within the community—we're also going to make a larger survey outside the ICANN community. We're actually going to invest some money in that to make sure that we actually know the demand side of it.

We're trying to calculate based on the assumptions we now have how much money—with the amount of requests coming in—calculate how much money that would be per single request. And that's something we

have to go back to the GNSO Council about, because there are some things in this that we don't have the answer to.

One of them is for instance, what happens if someone puts in a request and the balancing test on the other side shows that they don't want to send the data? Should the requestor then pay for it or not? I'm not saying that I have any answer to that particular question. I'm just saying it's a question that has to be solved.

The other thing is there are two costs in this one. One of them is the ramp up cost, the building cost of the system, and the other cost is the maintenance cost.

When the policy says it's only a cost, does it mean that it's only the running cost for the system, or the ramp up cost to actually build the system? We don't know that. So we're going to come up with a proposal and come back to the community so we can at least fix some of that mechanics to it.

A small thing of this is that going back to the NIS2—and Elena can talk more about it—the NIS2 might have an impact on the ability to—I'm going to go stretch myself into, for one second, despite if you disagree with us, how we interpret the law, if you for a second could be in my reality when it comes to interpreting the law, would that be okay? We don't have to talk about the—[saying that I'm not wrong,] but for a second or two, just accept my interpretation or the ICANN Org's interpretation of the law, because it actually might be beneficial for what you're trying to achieve.

So according to our interpretation and the European Commission's interpretation and the DPA's interpretation, the balancing test is done by the contracted parties. They're responsible for it. So in NIS2, they have put in provisions that might make it so the balancing test doesn't become important for the contracted parties anymore. They actually take away the burden of the balancing test as it is written into GDPR today.

Which means that an SSAD system is not an identifier system at all, it's only a transport mechanism. It doesn't make decisions. Actually, when the question reaches the contracted parties, their ability to answer it without the balancing test because the balancing test is now void becomes completely different.

Which means that we also—so the SSAD doesn't change because of that, but it will increase the potential outcome of the requested answer, especially for law enforcement. We have to figure it out when it comes to intellectual property, etc.

So we can build the SSAD as it's designed today regardless of the NIS2. But maybe just to give you a glimmer of hope that the balancing test might not be as—the burden on the contracted parties when it comes to the balancing test may not be so big when the NIS2 legislation comes out. With one caveat of course, that the GDPR is a fundamental law compared to NIS2, and nothing that happens in the NIS2 can ever change the GDPR in the first place.

So coming back to it, that's where we are, that we have been hoping that we will be able to get a better technical solution in place so we can

go back and give a better timeline for the Board to make its decision. We can't go to the Board for a decision until we actually know how a system would look. But we already know about some of the questions, like how are you going to fund this one, and we need more information about that. The way we're going to do it is propose to the GNSO, which we don't have an answer to right now. This is what we think.

And if you now ask me, depending on how we're going to do this, we're not talking \$10,000 per request, we're talking about a couple of dollars or something potentially per request, depending on how we do this.

I hope the answer made sense. Sorry, Mason. We're now 15 minutes past the time. I don't know if anyone has any more questions.

MASON COLE:

Let me open the floor quickly. Any members like to raise one last question for Göran or Matthew? All right, it looks like the queue is clear, so Göran and Matthew, I think now is a good time to take a break here and thank you both for your time. I appreciate you making time specifically for the BC, and I hope you'll come back to another meeting. We'll see you at ICANN 72 if not sooner.

GÖRAN MARBY:

Thank you very much. For a period of time—and maybe because of COVID—we ended up in a not so good dialogue. I don't think you're evil. I hope you don't think I'm evil. If we can actually talk to each other, we might have different opinions and interpretations. And I don't mind disagreeing. I know you don't mind disagreeing. But I will always have

respect of your opinions or views regardless if I share them or not. And my job is to make sure that you have a part of being part of the ICANN community, as well as civil society and everybody else.

So I hope that we can continue to have a dialogue. You can still beat me up if you want to. I have a thick skin. But it's better for me and also for Matthew to understand where you're coming from. Maybe we sometimes share the actual outcome but we end up debating how to get there. Sometimes I think we should more focus on the outcome.

Just remember that when WHOIS came around, me and the Board publicly went out and said we think GDPR is not good for intellectual property. We said that publicly, which some part of the ICANN community didn't like, but that's what we said. We might share the goals. It's the method to get there that we might disagree upon.

MASON COLE: Indeed. Thank you—

MATTHEW SHEARS: Mason, let me just add that it's a delight and would be very happy to come to your future meetings. Just let us know when they are, and with some time ahead, that'd be great. It's been a pleasure. Thank you.

MASON COLE: Thank you. And I think you can count on that invitation. Thank you both. Appreciate your time. We're going to carry forward with our meeting

now. You're welcome to stay if you like, or move on with your day.
Thank you both.

MATTHEW SHEARS: Thanks.

GÖRAN MARBY: Thank you, my friends.

MASON COLE: All right, ladies and gentlemen. We ran over time with that segment of the call, so we're going to have to be expeditious here on the rest of our meeting. So let's move forward. Brenda's already got the agenda up on the screen. Brenda, let me turn the floor over to you for item number three, please.

BRENDA BREWER: Thank you very much, Mason. I just would like to formally announce the election results for your 2022 officer elections. For BC chair, we have Mr. Mason Cole. For BC vice chair of finance and operations, Mr. Lawrence Olawale Roberts. For BC vice chair of policy coordination, Mr. Steve DelBianco, and for CSG representative on behalf of the Business Constituency, Mr. Tim Smith. Congratulations to all.

MASON COLE: Thank you very much, Brenda. Indeed, congratulations to everyone, and a special welcome to Tim Smith to the BC ExCom. I know I mentioned

this last time, but I'd like to say thank you on behalf of the entire BC to Waudo Siganga for his exemplary service as CSG rep. He did a wonderful job. Unfortunately, he can't continue in that role for 2022. But we have a very worthy replacement with Tim Smith, and it's a pleasure to welcome you, Tim, to the leadership team, and congratulations to everyone on their election. So thank you, and thank you, Brenda, for conducting the election.

All right, we're now on item number four. We have 27 minutes left. We're going to need to be expeditious. Steve, over to you, please.

STEVE DELBIANCO:

All right. There's nothing to review on prior submissions in the last two weeks, so I'll just jump into three open public comments we have in front of us right now. One is amendment five on the .name registry agreement. We discussed this two weeks ago and this incorporates base registry agreement provisions that we have historically been in favor of. Unless there are objections, I propose that we provide a one-sentence comment supporting the amendments to .name. In particular, I alerted Zak to that and Zak agreed that would be appropriate.

Are there any other BC members who want to discuss? We have some time, but it'll have to happen before our next call for the BC, which is why I wanted to get approval of it now. Okay, looking in the chat, not seeing anything. Thank you, Zak, for getting back to me. This doesn't get submitted until the 20th of October. If anybody has any misgivings, let me know.

Number two, the EPDP on curative rights protections for the intergovernmental organizations. That's a mouthful. It's a complicated legal question, and Jay Chapman represents us on the EPDP and now we have several BC volunteers working on our comment. Jay himself, Andy Abrams, Marie, Jimson, and Zak.

Last night or yesterday, I attached their current draft as of yesterday afternoon. But that current draft has changed several ways in just the last 24 hours. So it really isn't time to do a detailed review by members. I just gave you a snapshot of where they were in progress.

By the 17th of October, the drafting team is working really hard on this. We'll have a copy that you guys will all be able to—they'll settle on the revisions and then it'll be in your hands to review for seven days before we submit it on the 24th.

So Jay, Andie, Marie, Jimson, Zak, is there anything you want to add right now?

ZAK MUSCOVITCH:

We'll get through this, Steve. Marie sent some helpful comments not long ago, and I'll respond to those hopefully this afternoon and we'll get this done. Thanks.

STEVE DELBIANCO:

And Zak, let me particularly thank you for working with Andy Abrams yesterday on accommodating his issues. You must have done it quickly and effectively because he agreed right away. Thank you.

Number three is—every year, we go through this where we comment on ICANN’s draft operating plan and budget for the next fiscal year for the technical identifiers and the IANA functions at ICANN. Right now, Tim Smith, Lawrence and the finance committee are working on that draft. It’s not due till the 25th so I wouldn’t expect them to have something for you until the 18th of October. Are there any other BC members that want to volunteer to help on that? We have a good team there already.

Next thing up, I'm going to be turning to Nick and Drew to talk about the current state of affairs on the NIS2 outreach. And again, our mission, as [inaudible] laid out there pretty clearly, is the BC is advocating with the appropriate committees about specific amendments to be supported and made, and we have written to the European Parliament committees. That was in early September.

At this point, we’re creating a guide that BC members can use when they do outreach to NIS2 as those committee votes and parliamentary votes approach. All I did with the policy calendar yesterday was to attach a snapshot of where those negotiations were in that drafting, but that has changed as well in the last 24 hours. So I thought I would allow Drew and Nick to talk about the current state of play and what you need to know from the BC membership.

DREW BENNETT:

Thanks, Steve. I don’t think we have Nick on. And my connection is crap today, so I was going in and out there for the first half, probably

because it's only going up to 68 degrees in Los Angeles. Things are really out of whack here.

STEVE DELBIANCO: Yeah, it's even raining, I heard. By the way, we can hear you very clearly.

DREW BENNETT: Okay, good. And I haven't been able to see, did you attach the outreach guide or a version of it then to the e-mail?

STEVE DELBIANCO: Drew, I attached what was a snapshot yesterday afternoon, but Nick and you both made edits last night so I didn't necessarily want to bring it up and walk through it with people, [inaudible] general idea.

DREW BENNETT: Got you. No problem. The edits were not major, so I think folks should check out that outreach guide. It is link rich and it is a really good kind of—if not to the minute, at least up to the day, what has come out on NIS2 as well as more importantly, a forward looking kind of guidance for members as to our higher-level talking points, because we are gearing those towards a stage in this process whereby the lead committee at parliament will be coming out with its final report, effectively its final compromise amendments that we believe will be adopted by the parliament before the holidays, before the end of the calendar year and introduced to the full parliament and Council in what is called a first reading in early 2022.

At that point, there are representatives from European Council who also take this up. As things get to a much higher level in terms of the knowledge of European officials looking at this and hopefully, eventually, approving and adopting it and writing it into law.

So what we're gearing these talking points for are targeted outreach, in particular to the Council members that we want to encourage to approve what we think will be a pretty favorable first reading that's going to come out over the next couple of months. Of course, that remains to be seen. We'll get a really good read on that after October 16th when the committee has its final vote on the compromise amendments.

So we'll keep you posted as that develops. In the meantime, I think this is a good educational document, and we're going to kind of put it into practice, like I said, over the last quarter of 2021, the first quarter of 2022, and we'll be kind of using this time on our regular meetings to let you know about specific officials that we're targeting, as well as GAC members who will be good to get these over to their counterparts.

I'm hearing from Marie, looks like ITRE has moved to the 28th. That's not great news, but okay. So that was that instead of that 16th date I just gave, that would be the 28th.

So yeah, I think between now and the 16th or the 28th, we'll probably have an updated version of this, but it would probably mostly be changing some of the talking points responsive to the compromise amendments that are voted on. So maybe we want to wait till November. As I said, this version is going to be very useful.

I also wanted to ask, going back to that crap connection of mine, I was coming in and out during Göran's discussion and I came in right at the end where he said I think something to the effect of nothing in NIS2 can change the GDPR. Was my hearing of that correct? And what was the context?

STEVE DELBIANCO:

Exactly that. But he did hold forth about the Digital Services Act and how it would conflict with what is currently proposed on NIS2. It was a long discussion, and the main part of it was there's a lot of moving parts in Europe and elsewhere. And until things settle out, he's not prepared to predict whether ICANN policy has to change in response to NIS2.

DREW BENNETT:

Yeah, I heard most of that. It was just that one. But I think anyway, we could follow up in an e-mail and outline—which I would think he's aware of, but I guess technically cannot change the GDPR, of course, but the NIS2 will signal to member states as well as the courts ways in which for example certain provisions of NIS2 will safely put into the realm of the public safety exception of GDPR for doing things like giving legal assurance to contracted parties that they can supply the public or legitimate requestors with certain data from the WHOIS.

So yeah, if we can do that in a brief e-mail as a follow-up, I'll draft it, send it around to some folks and get it to Mason. I'm sure there's other topics maybe that folks want to follow up on from discussion today. So maybe we'll have to do that in e-mail and send forth some education.

STEVE DELBIANCO: Drew, what we owe our membership is that if our talking points deviate or expand upon things that the membership has already approved, then we'll want to definitely bring it to everybody's attention and give them seven days to review new rhetoric and new talking points.

On the other hand, if we're simply rearranging and adding citations and evidence for talking points we've already approved in the September letter, then we can continue to keep the membership informed but we don't have to go through a formal seven-day review.

DREW BENNETT: Yeah, the bulk of that is in the September letter. So I'll just put them in together and send to Mason. Everyone will see it. But yeah, that's a good point.

STEVE DELBIANCO: All right. We have a hand up from Mark Svancarek with a question. Mark, go ahead.

MARK SVANCAREK: It wasn't a question, I was just thinking I could clarify the previous question, but it sounds like we're taking it offline to the list. So in the interest of time, I'll leave it there.

STEVE DELBIANCO:

Thanks, Mark. Does anyone else have a question for Drew and the other drafters of our NIS2 work? Seeing no hands up, Drew, thank you very much, and Mason, and others who've contributed, Marie and Mark as well.

I'm going to go back to the general policy calendar now, and that's up on your screen. And channel two, which is the Council support. We have Mark and Marie on the line, and I have a brief recap here, Marie and Mark, on what happened on the 23rd of September, and then I have an opportunity for us to discuss what's going to happen at the 27th of October meeting as well as working out where we're going to be on that vote. The floor is yours.

MARIE PATTULLO:

Thanks, Steve. First up, my apologies that I was late. I was tied up in a European Commission meeting about the DSA, actually. In the interest of time, two things that were discussed at length at the last Council, one, ICANN staff's attempt to understand the UDRP, and that has now gone to the Council list with extensive comments from me and extremely extensive comments from the IPC. So not much that I can feed back at the moment.

The most important thing by far is EPDP 2A. I admit that I was blindsided, because if you remember at our last discussion, we were concerned that we the BC would potentially be seen as the bad guys again for maybe considering that we might not approve EPDP 2A when it's voted on this month, in October.

We of course didn't mention anything about that, but as instructed, we waited to see what the others would do. And very interestingly, it was the contracted parties led by the registries who said straight off the bat that they did not think that recommendation 1 is in scope of 2A. In other words, the whole bit of the recommendations that the BC actually likes, that there will be a mandatory field that could be filled in at some point in the future, they think that shouldn't happen. And they've made a lot of noise about this, back and forth quite a lot.

And Steve, I know that you've put into the policy calendar that Council leadership—so the chairs—went away, thought about it and came back and said we disagree.

Now, this is as much as I know. I'd be really interested if anyone knows anything else. And I think Mark and I really need some clear guidance on how you want us to vote in a couple of weeks. I'm going to stop there. Thanks.

MARK DATYSGELD:

I'll briefly add that—yeah, that's that. I think we need your support. It's not very clear what exactly is the way to go. And hearing from you in depth, if possible, would be super helpful.

STEVE DELBIANCO:

All right, let's budget five to ten minutes to see if we can get this worked out. We talked about it two weeks ago and you realized that the Council vote will occur on the 27th. When is our next call? We do have one more call before then on the calendar, right, Mason?

MASON COLE: Right, 21st.

STEVE DELBIANCO: Okay. So we will have another opportunity. What I did here on the screen is I recapped for you what we talked about in our 23rd of September call. So Brian King and I had suggested that we vote yes, because we think getting the additional data field which indicates whether they're a legal or natural person will be valuable if and when the European Parliament approves NIS2 to require differentiation, publication and accuracy.

We added that Steve and Brian thought that the CPH would vote no if we voted no so that—that's sort of a secondary-level effect, but we believe that that is what we have to gain from EPDP phase 2A. Margie, I'm going to let you speak about your point of view, which is different, but I paraphrase, Margie, what you came up with last time, is that a no and having it fail would be fine because it would pressure council to take action.

So why don't we have that back-and-forth and see if we can come to a resolution? Margie, then Mason, then Mark.

MARGIE MILAM: Sure. I'm not persuaded by what the contracted parties were doing. And I just want the BC to understand how weak the recommendations are. We really aren't gaining anything if it doesn't pass. It's basically a recommendation to go work with the IETF to come up with a field.

There's not even any indication that it would be part of WHOIS, that it needs to be used. And all of that work can be done outside of the policy process.

I feel that if we join the majority—or in the council, that it undercuts our position that this entire process was patently unfair and never took into account our recommendations. So I would encourage the BC to really stand firm along the lines of what our minority statement was and to vote no.

And if it turns out that the Council votes the whole thing down, I think that says a lot about the multi-stakeholder model than the opposite. If we vote with it, we're basically agreeing that the process was effective, appropriate and that this is a useful solution. And honestly, I'm just not there.

STEVE DELBIANCO:

Thanks, Margie. I did highlight just now a line that came on the 30th from Council leadership where they said we note that the phase 2A final report had the consensus support of the phase 2A team. And I guess that's based on the fact that in the last call when there was a discussion of "give us your 'cannot live with'", we didn't step up and say that we can't live with rec 1, rec 2 or the rest.

So Council seems to be indicating that the phase 2A team had a consensus. And what would we say to that, and how do we explain how we moved from support to opposition between the end of the report and the beginning of the Council vote?

MARGIE MILAM: If I could respond, I think it's what we talked about last time, which is we asked for a recommendation-by-recommendation vote and did not get it. And that was a deviation from the prior practices in phase one and Phase two. So I don't see any reason that that can't continue to be the position that we take, and I'd encourage us to hold the line on that.

STEVE DELBIANCO: Thanks, Margie. I have Mason up and then Marc.

MASON COLE: Thanks, Steve. I just wanted to echo a bit about what Margie said because the concern on my part is that the process, up to this point, through Phases 1 through 2A have not been kind to Non-Contracted Parties and their desired outcomes. We've been consistently patted on the head and pooh-poohed. I don't think that's been healthy for our outcomes.

So I want us to think carefully about this vote. I realize the potential upside on the data field but as chair of the BC, I'm concerned that our desired outcomes out of this entire process have been roundly ignored. We just need to think very carefully about how we vote on this. So I'll stop there. Thanks, Steve.

STEVE DELBIANCO: Hearing that, Mason, I can't tell whether you are a yes or a no from that.

MASON COLE: I lean no.

STEVE DELBIANCO: Okay. Mark Svancarek, one of our reps on the EPDP.

MARK SVANCAREK: I agree completely with Margie, which is not surprising since we have discussed this recently between ourselves, and with Mason. It's not just that the three phases were unkind to us. It's the fact that this last phase, actually, was substantially worse in my opinion—that there's no longer even an attempt to work together on policy matters at all. So it's gone from, as you say, being pooh-poohed, and patted on the head, and frankly, gaslit, to now just outright opposition. There's really no attempt at developing any real consensus anymore.

I'm not especially worried about the narrative—how did you get from the one position to the other position? Margie is right. Our support was based on the idea that we had to vote all the way up or all the way down. But I don't think either of those positions are going to convince anyone who hasn't already made up their mind on this. I think that government observers have already made up their mind and probably agree with us. So I'm less worried about that particular bit messaging.

And then finally I do want to restate what Margie said at the end, which is the one thing that we wanted—the one thing that we felt like we got—the standardized data field is really just a recommendation to go to the IETF, work in the IETF, and create a data field which would then

hopefully be adopted by the RDAP Working Group and then hopefully implemented by various Contracted Parties on their own, by their own choice. We can start that process of going to IETF now without any policy recommendations at all. I think it would have the same uphill battle as if it were promoted by this recommendation. But honestly, I think it's really all the same.

So I'm also strongly leaning towards a no. I don't think that we really get anything from voting yes and I don't see that it hurts us so much by voting no. Thanks.

STEVE DELBIANCO:

Thanks, Mark. Alex, I know you put something into the chat but why don't you expand on that and indicate where you would lean, since you're also very close to this process.

ALEX DEACON:

Sure, Steve. I think Mark basically just made the point I made in the chat which is the only obligation in the whole 2A Final Report is on ICANN to work in the IETF to create this standard. And as Mark mentioned, anyone could do this. We don't need to give ICANN marching orders to do this. I think, ideally, they would. But anyone can do this at any time. We could start it tomorrow if there was a group of us so inclined. In terms of where I would lean, as you know, I am not a voting member of the BC but I would lean no also.

STEVE DELBIANCO: I was going to ask for this but Marie put it in the chat anyway. We would need to explain the rationale for a no vote. That should come from those of you who were the closest to it and have the strongest feelings about explaining it. We should also indicate why we think it isn't necessarily very valuable to have a process kicked off for the addition of the field.

So I would suggest, at this point, that Mark, Margie, perhaps you could draft a paragraph—that's about it—explaining why we would be a no. And then we can try to circulate that to the BC members prior so that they can understand and indicate ... I'll just ask. Are there any objections at that point? That would make it very clear for Marie and Mark what they need to do. Mark SV, I see your hand up.

MARK SVANCAREK: Sorry. Old hand.

STEVE DELBIANCO: Okay. Yeah. As Marie said, just a paragraph, really. It's a statement that they would end up reading when they vote no an explaining it. We don't really understand, at this point, the way CPH or NCSG would vote. There's an accidental order of voting, to where we went early and voted no, I might influence the other votes that follow. The same thing might be true in the opposite direction.

But the sense I get, Marie and Mark, Alex and Mason, is that you would say we are a no, no matter what the other side votes—no matter what. So even if everyone else were a yes, I think you would still be wanting

the BC to express some protest principle by voting no. Do I have that right? Okay. The trick about a protest vote is it doesn't look very good in the minute. So it would be better to give an explanation that seems much more substantive than just, "We don't feel we were treated fairly."

Anything further on this from BC members? And, Mark, we have not control over who votes first, right? Marie, my point was the CPH had kept claiming that it was out of scope. I don't know that their out-of-scope demand really indicates how they'll vote because it will work bad for Contracted Parties to vote no, indicating they don't want to do anything. I don't know how they'll vote. I have no clue. But we just need to explain our position and I don't think it's good enough to just say, "We weren't treated fairly so we're going to vote no." Okay? Anything else on this. All right. Thanks, everyone.

Zak and Arinola, handling our Transfer Policy Working Group. Anything you want to add on the current state of affairs there?

ZAK MUSCOVITCH:

Thanks, Steve. Not right now but I received your note about some concerns about the gaining FOA and losing FOA proposals that are underway. I'll report back to you and executive committee shortly on that.

STEVE DELBIANCO: Thanks, Zak. Arinola, anything to add? Let's move on to the Commercial Stakeholders Group. Waudu, you prepared your report and I've got it pasted right in here. So why don't you take over?

WAUDO SIGANGA: Thank you, Steve. Since the last BC meeting, I think we have only had one meeting of the CSG to report about. That was the members meeting, held a few days ago on October the 5th. I believe quite a number of BC members were on that call. So I think my report will be, more or less, a recap of what has come out of that particular call.

The first item, that I'd deal with very quickly because I know the time is short, is regarding ICANN 72 planning for the CSG activities. The first thing I can say is that we are to have a CSG open meeting. We had planned that earlier to be on Tuesday, October the 26th. But we have had to postpone that meeting because there's a scheduling conflict. So we are going to inform the new date once we have set that. This is the meeting that we are to have the CPH and the NCSG in attendance.

The second meeting, with regard to ICANN 72, is the CSG sessions with the board. This session will go ahead. We had a little bit of talk, whether to maybe change it to another format but we decided just to go ahead with it as the normal session with the Board. We are busy compiling the questions for the agenda. And I think we'll be coming back to the BC to request for any relevant questions that we can pose to the Board. There's a chance that maybe those questions will be posed constituency-by-constituency rather than consolidated as CSG.

Regarding the idea of having a more informal interaction with the Board, we are also thinking of a workshop and Chatham rules a little bit later. But in case that comes to some fruition, I'll come back with information about that.

Then, about the plenary session for the ICANN 72, there will be only one plenary session. It's actual not virtual but Designing Hybrid ICANN Public Meetings. The proposal of that session is to see ways and means to equalize in-person and remote participation.

Then there are two other sessions I have indicated there, that will be of interest to CSG members. Both of them are in the Prep Week, the first one on the 12th of October. That's ICANN Reviews and Implementations Status Update. And then the second one is on the 13th of October. That's also an update on the global public interest at ICANN. That's as far as ICANN 72 goes.

Then of course, there was the information that given by Tom Barrett, the chair of the NomCom review implementation team. That was welcomed by most of us and that is that the rebalancing recommendation that had been there in the report of the NomCom review has been withdrawn. So I think that's good news for BC members.

The next item I can report about is regarding GNSO elections. We've been having this item in our BC calls over the past two or three meetings that we've held. The information we have now is that Philippe Fouquart is the only candidate for chair when the elections will

be held, meaning that NCSG and CPH have nominated BC's because Philippe Fouquart is from the CSG side.

So for the CPH, they have nominated Sebastien Ducos as the BC. And for the NCSG ... I'm sorry I've not indicated it there but they have nominated—I hope I get the pronunciation correct—Tomslin Samme-Nlar. It's a difficult name to pronounce. Maybe next time I'll put it in writing so that people can get it right. That is the GNSO elections.

Then the next item is the Work Stream 2. There are some items regarding Work Stream 2 that are specific to the CSG. We have not really started working on it. Our intention is to call for volunteers to work on the Work Stream 2. So we are also going to come back to you on development in that direction.

Then the CSG has also organized a call with the GAC Public Safety Working Group. This will be on the 18th of October at 15:00. We shall send out a formal invite, together with an agenda for this. There will be several important issues to be discussed there. But one of the most important ones, which also fits in with one of the priority of the BC is, of course DNS abuse.

And then, the last piece of information is just about maybe some new CSG incoming members. IPC president Lori Schulman and vice chair Brian King will take over representation of the IPC. I think this should be at the end of the year when Dean Marks and Heather Forrest, the current representatives make way. Then we'll also have Susan Mohr [from Lumen,] the new VC for ISPCP constituency joining as well as, of

course, our own Tim Smith. So I think that's my quick report. Thank you. Back to you, Steve.

STEVE DELBIANCO:

Thanks, Waudo. The only other item at the bottom is I'm telling you again what I told you two weeks ago, is that ALAC invited me to participate on one of their panel session. It's not a big plenary. It's an ALAC session to talk about Org accountability, and the reviews, and the holistic review. So I'll be doing that. Okay. Back to you, Mason.

MASON COLE:

Thanks, Steve. We are six minutes past our stop time. I was just chatting with Lawrence. Lawrence has agreed, graciously, to forgo his report for today. We'll cover it in the next meeting or by e-mail or both. So thank you, Lawrence, and apologies for running over today. All right. Is there any other business to be raised to today with the BC? Okay. I see no hands. It looks like the queue is clear.

All right, ladies and gentlemen. We have our next meeting in two weeks' time, at the regular time. That will be on 21 October and that will immediately precede ICANN 72. So we have a busy several weeks coming up. I look forward to talking with you then, if not sooner. If there is no other business, then the BC is adjourned. Thanks, everybody.

[END OF TRANSCRIPTION]