
ANDREA GLANDON: Good morning, good afternoon and good evening. Welcome to the NCSG policy call being held on Monday, the 17th of July 2023 at 11:30 UTC. Attendance will be taken by the Zoom room. I would like to remind all participants to please state your name before speaking for recording purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. And with this, I will turn it over to Tomslin. You may begin.

TOMSLIN SAMME-NLAR: Hi Andrea, and thanks everyone for showing up today. Early mornings, during the days and late nights. Thanks for coming. As usual, we will today walk through the agenda for the council meeting that's coming up this week. And then we'll look at some policy committee items that I thought would be nice for us to catch up on. And then we'll also have a look at a review, maybe comments from the GAC-PSWG meeting we had weeks ago. And then, since there was a lot of talk about PICs and RVCs, I had asked Daniel in Washington to take a look at what our past positions have been and he'll let us know what those are.

So, without much ado, we'll go into agenda item number two. I had forwarded the draft agenda to the mailing list. As you'll see in the agenda, there are a couple of consent agenda items. I think one of them is to defer the registration data accuracy scoping team recommendations for another six months. That makes sense now for the council, really. I don't think anyone has capacity to do much work

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right now. SubPro items and the rest of the things pending in the council table, they've taken everyone. I think most people are in three small teams right now. I think it'll make sense to defer that for a bit.

Then we'll review the GAC communique. I don't have much to say about this GAC communique, but I do know that, if I'm not mistaken, Manju, you are in that small team that was looking into this. Is there anything you want to comment on?

MANJU CHEN:

Hi, Tomslin. This is Manju. We, as the small team, we review the communique. I think we reply. Also, when we are reviewing the communique and then we kind of supplement information from GNSO to the board as reference when they're considering the GAC advice. That's what we do as council.

So what we had supplemented information for, I think, is mostly on SubPro. On the SPIRT—I had to think of the full name. It's like the predictability, reviewing, independent panel, those kind of things. So council was going to charter this panel. And so we kind of supply information for that. And also on PICs, we supply information on how currently the small team under the council is working on exploring ways forward. And I think that was about it. On the important issues, we decided we didn't have to reply or kind of supplement it with any kind of information. We thought it would be sufficient for Jeff as the GNSO liaison to the GAC to directly talk to the GAC if they have any concerns. So I don't think there was like any huge issue we had to pay attention to.

TOMSLIN SAMME-NLAR: Thanks, Manju. Yeah, if there are no comments or anything anyone else would like to add, I'll proceed. Stephanie.

STEPHANIE PERRIN: Yes, just a quick question. There's nothing in the GAC communique about the issue we discussed at the Public Safety Working Group, because I'm not sure that we within NCSG have a united position on how we feel about anonymous law enforcement requests. And there's a good reason for that. I don't have any idea how they proposed to do that, allow law enforcement to anonymously request data. The only way they can do that, in my opinion—and remember, I'm the nontechnical person here, it's strictly policy that I do, but the only way they could do that is to go direct to the registrar and request data from them, which they do anyway, right, usually with a warrant. So, and they would have to, in many countries, swear the technical people in, which they have given themselves the capacity to do in my country and doubtless most of the Five Eyes countries.

So, I'm just wondering, I know that folks living in countries where the rule of law doesn't necessarily pertain and human rights don't necessarily pertain when you're dealing with criminal matters. And I'm not suggesting that human rights are always honored in the countries where at least there is rule of law dictating what to do, but at least it's better than in situations where countries give themselves the right to pretty well search and detain without evidence.

So I just wonder, did that show up in the communique, even obliquely? Because apparently we're supposed to be working on that and I don't know who's working on it. Thank you.

TOMSLIN SAMME-NLAR: Manju, do you want to respond to that?

MANJU CHEN: So just briefly respond. It was not in the advice, so they didn't really provide advice on this. And as I said, we were mostly dealing with the advice. But I remember it was mentioned the issue of importance to GAC. And like I said, I think among the small team, we were like, this is nothing directed to council, and we were not really doing anything about it. And at that time, I wasn't sure how the small team was discussing this issue. I kind of brought it up with our councilors asking for updates. And so we didn't really respond to any of the issues of importance on that. So that was in the communique, but not in the advice. And that's why we're not really replying or supplementing any kind of information on that issue.

And personally, I've talked to our GAC representative, and I think they're discussing this too, because as I mentioned it to you guys, I didn't like that idea. And I was pushing them to do something, but I'm not sure. Yeah, like Stephanie said, I'm not sure we have a unified position within the NCSG. Me, myself, I'm strongly against. I think if we have to have a position, we really need to talk it through. Thanks, Stephanie. And that's it.

TOMSLIN SAMME-NLAR: Thanks, Manju. And I don't think that conversation in terms of from a position perspective in CSG on anonymous requests has come up yet. And I think if you don't mind, Manju, you could champion that and see if we can get a position. I see Ephraim's hand up. Sorry for keeping you waiting.

EPHRAIM PERCY KENYANITO: No problem. Actually, you just raised the point. I think we should be proactive on this rather than reactive. I know bandwidth is, yeah, so that we don't react when time is limited. We'd rather just come up with a position. Yeah, so basically, coming from a country or having lived in different countries, and I've seen places where, for example, there is a need for court orders to search and whatever, detain. Yeah, it's very concerning if we get to a point where it is anonymous. I wonder why there would be that anonymous, because I would guess from how they intercept, for example, telecommunication, they get a court order from a magistrate and they don't serve this court order to the person targeted. They only serve it to the telco or to the company, and then they get these records and stuff like that, or they monitor this data for this specific period, or if the period lapses, they are able to renew. I'm just curious what the intention would be, but it would be good to have that position. And yeah, from the CCWP, we'd be very interested to see how we can help. Thank you.

TOMSLIN SAMME-NLAR: Awesome. Thanks, Ephraim. I think we've briefly discussed it amongst councilors, but not into any particular depth, and we mostly raised concerns, and I think this came up from that PSWG meeting we had with GAC, I think. So when we're reviewing that meeting, I think we might find a way of getting much more additional information from the GAC Public Safety Working Group, since they seem to be the ones pushing this through. But yeah, maybe we should first continue with the council agenda, then we'll resume when we come to the agenda item. So moving on to the other item that's on the consent agenda, is the GNSO non-registry liaison to the Customer Standing Committee. I think this is a renewal for Milton, because he had taken over from James Gannon when he moved to the board of PTI, and there is an additional position that was, I think, added a GNSO non-registry liaison. There is an alternate to this role as well, because I guess as volunteers are always busy, there is need for alternates. So they've added that this is the first time an alternate to this position will be appointed. So that's on the consent agenda. I'll pause there to see if there are any comments or interventions before we move on to item number four.

All right. On item number four, this is not a very big item, but I think the council on this item will be discussing how to communicate back, if you like, to the European Union's NIS2 directive, since the multi-stakeholder model was mentioned specifically in terms of the model to be used to develop policies and procedures for accuracy by domain name registries, resellers and proxies. So GNSO is considering acknowledging such a mention of the process. And whether we should or should not acknowledge, or the way this has been presented by Thomas is, it will be good to acknowledge so that we encourage the governments in

Europe to continue looking up to the multi-stakeholder governance model for such policies. So that's the discussion really that's on in the council on this item. There is no decision that's been taken. It's really from a communications perspective. I'll pause there to see if anyone has some comments to provide on this.

All right. Moving on then. Item five is after the two ODAs and ODPs and the council haven't provided or appointed liaisons to both ODPs. The council is now reviewing that process or that role, whether it was efficient or if it can be improved. So the council had asked for feedback from the two liaisons, Janis and Jeff. So I haven't seen this document, to be honest, so this will be discussed in the meeting, what the feedback is. I don't know if there's any other councilor who's seen the document who might want to add a comment or say something about this, but personally I haven't. No one. Okay. Yeah, we'll move on to Steph.

STEPHANIE PERRIN:

Yeah, hi. I guess I have been falling down on my homework in summer, I have not looked around for that paper but there appears to be a link there so I think it behooves us to take a look at this thing. If Janis and Jeff are the liaisons, that doesn't sound like a recipe for a consolidated view there between the two of them on how this thing actually works. So maybe we better have a look before Thursday and see what the report says, the ODP process paper. So I will put up my hand to do some work for a change. Thanks.

TOMSLIN SAMME-NLAR: Thank you. You are signed up. All right. Thanks for volunteering to look into that, Steph. Item number six. The big one. The SubPro small team update on the pending recommendations. I think the clarifying statements are currently under review by the council. I should remember to share this with the broader NCSG so that you can also see what the small team came up with. In terms of, again, in terms of clarifying statements to those non-adopted SubPro recommendations where the council thought that clarifying statements, simply clarifying was enough for the board to proceed with adopting them. So not for all the recommendations that were not adopted, but for those that the council thought simple clarifying statements should be enough to push the board to approve them. One of those obviously is the PICs and RVCs. I know that we had a lot of discussion about that idea that the board had introduced about making a bylaw change so that the recommendation can be adopted, which in day zero of in DC, the council meeting with the board, some board members, we agreed that we will not be pursuing that at all. And the council will simply send a clarifying statement saying that the PICs and RVCs must be contractually enforceable between the board and the applicants. And that is what that recommendation meant. And that's all. So no mention of bylaws change at this time at all from the council. I just thought I'll highlight that. I know we have an item about PICs and RVCs, but I thought I'll highlight that because the council is not saying anything about bylaws change at all in its response that's been put out of question.

So I'll pause there on this. Another comment I should mention is that applicant support is not part of these clarifying statements. That needs a bit more work than just clarifying statements. So it's still with the

small team. And that small team will be meeting tonight my time, later today to further its work on those items that clarifying statement was not enough. All right. I'll see if there are any questions or comments now. All right. No. Questions or comments, we'll move on.

Item number seven. I see a question on chat. What time does a small team usually meet? I think I know the time in my time current time zone and that's midnight, but in terms of UTC I think it is 2:00 PM UTC. Yep. Thanks, Daniel. Yeah. All right.

Item number seven. Follow up on the IGO curative rights. I think on this one, the council is simply discussing whether we need to put this on the priority list in terms of work efforts that are sitting on the council's table. So that to let org prioritize this in relation to the other items, obviously, that are sitting with org from a GNSO perspective. So there'll be two PDPs, if I'm not mistaken, that had recommendations, total of five of them that were adopted by the board and sent to org. So the council will be discussing whether to ask or to prioritize this or not. Again, in relation to the rest of the work that's from GNSO.

And on item number eight, IDNs PDP timeline, I see Emmanuel is happy and ready to give us an update on that one. So I'll defer to him to give us a quick update on whether—I know that on this item, we're going to be looking at a revised timeline. The PDP promise to revise it and make it shorter. I don't know how short they have made it, but over to you, Emmanuel.

EMMANUEL VITUS:

Thank you very much. From the IDN EPDP, we are currently reviewing the [inaudible] one public comment. So, as you are aware, we have received 12 submissions from different groups and organization and individual and the EPDP team has started the review of those submissions. So it was great having a comment from the Cross Community Working Party on ICANN and Human Rights, which is our own Ephraim. That was great because just by the fact that the comments came late, we are actually deliberating on it. And I think it was very interesting because from our last meetings that we have, there was a lot of recommendation from Ephraim and the person he work with that we are deliberating on. So it's quite interesting having that human rights into the preliminary recommendation that we have.

Now, quick one regarding the review of the project plan. Initially, what was submitted to the Council somewhere around last year, end of last year, was November 2025. But we have made that commitment to deliver a shorter date during the next Council meeting, which is this week, so that we can actually take it down to October 2024, which is almost a year.

Why are we doing this? At the beginning, we didn't actually identify the fact that it will affect the next applicant guidebook. But since we have identified that almost all the recommendations from the phase two will impact the next applicant guidebook, we are actually trying to maybe work more or add more time to what we are doing right now to be able to deliver that before the date, the tentative date that we are given, which is October 2024.

So to do that and to speed things up, we are actually looking at a face-to-face timeline where team members can meet face-to-face to move on quickly. So a quick survey was done among members. So there's a tentative date around December this year, 6th to 8th December this year. But the location is not confirmed yet. We're looking at Kuala Lumpur or Singapore to do that face-to-face meeting to actually move on quickly. So we are still working on confirmation on the location. And it will likely be two or three days workshop. So I will keep you updated on that. But I think the chair will give a more extensive project plan or new project plan to the council during this week meeting.

TOMSLIN SAMME-NLAR: Thanks, Emmanuel. When you said you're shortening the timeline because you've noticed that there is impact on the next round on the phase two items, I was going to ask what that meant for you volunteers. Does that mean you double—I know you already meet at 90 minutes, if I'm not mistaken, weekly.

EMMANUEL VITUS: Yeah, it's 90 minutes weekly. So I just spoke about the face-to-face workshop, because we've noticed, for example, if you take ICANN 77 where we started looking at the phase two recommendations, when everybody's in the same room, it speed up things quickly. So that is one. So we're looking at that workshop. But also, I think we're also trying to identify if there's a way to do a prioritization of the recommendations so that we actually try to look at that. That will really impact the next round and keep the project plan technically unchanged. And that's

technically until 2025 [inaudible] able to complete all the recommendations that will affect the next round by October 2024.

TOMSLIN SAMME-NLAR: I see Manju's posted in chat that it's 120 minutes, not even 90.

EMMANUEL VITUS: No, it's 90 minutes.

MANJU CHEN: Oh no, I was last week for the IDN EPDP meetings, it was two hours.

EMMANUEL VITUS: No, it's because now we are reviewing the public comments and sometimes we go beyond the meetings so that we're able to finish some of the comments. But regularly it's 90 minutes.

TOMSLIN SAMME-NLAR: I hope you guys don't crash.

EMMANUEL VITUS: Well, it's too technical, at least for me. So sometimes I do a bit of that. I'm just kidding. It's quite interesting because I think it's becoming more usual to everyone because we know that every task from this time to this time is in our agenda so that everybody is actually doing it. And I think the staff is also doing a very good job giving us very good

summaries so that before the meeting and those kind of things. So it helps move on quickly.

TOMSLIN SAMME-NLAR:

All right. Thanks. Thanks for the update. I'll pause to see if anyone has questions before we move on. All right, seeing no hands, we'll move on to item number nine, which is any other business. And here we'll be looking at an update from our ccNSO liaison and also an update from closed generics. Yeah, I think that's all that's on the council agenda. So we'll return to our agenda.

Going back to our agenda, agenda number three. We'll have a quick update on the representative to the second IANA naming functions review team. As you know, the bylaws require us to, we must provide someone for this. Now, we have two expressions of interest, but the policy committee has reviewed those, but we'd still like to get more applications because the expressions of interest we have so far have not met the skill requirements for the IANA naming function review team so far. So that's still being reviewed. So we would like for folks who have some interest in the IANA naming functions or PTI to please consider this. We were given some requirements to meet. And I would say to add to that, I would say I was the cochair for the first IANA naming functions review and I think it's not a lot of work from the team members perspective, that is, because they'll meet, I think, one hour every week and to review the naming functions, how PTI is providing those. How long is expected for this review? Usually, the first one went for a year, Rafik, to answer your question. The first one went for 12 months and we were able to submit our final report after. But again, like I said, it's

every week, 60 minutes of meetings. Then I think the only, there is obviously just a bit of homework in between reviewing all the documents from PTI and the bylaws and CSC's views as well. So we have to submit before—it's due on Monday, 31st of July. So please consider that.

Item number four, the transfer policy review working group. We are meant to have up to two representatives and up to two alternates for this working group. We currently have one rep, but I think that was Rahul and he did send an email to the group. I think anyone who's been reading will see that he's saying he's unable to attend as well and to follow up because of the time of the meeting conflicts with his work time. So we certainly need a replacement and in terms of their representative. Again, we allowed most groups have up to two members as reps. We had only one and two alternates. The two alternates are Juan and Wisdom. So with Rahul saying he's unable to meet the meetings, we certainly need one or two representatives for that work as well. I think I'll send a follow up on email on the list about this as well. I'll pause there on those two, see if anyone wants to say something about them or comment. Juan, please.

JUAN MANUEL ROJAS:

Thank you. Yes. Well, actually, I am the only, I think that's active on this working group. So I can assume being the representative. So we only will need just another representative or another two alternates or have another representative that working with me in this working group. And yes, and two alternates or just one because I know Wisdom is over

there. So I can step forward to be representative. So as you know, I am active on that working group. Thank you.

TOMSLIN SAMME-NLAR: Thank you, Juan. And thanks for stepping up to be the rep. Certainly, there's, I think, some interest of coming on for second rep. Or as an alternate. So you say you're the only one there right now. So you certainly need two more alternates and another rep if possible, but we'll go with an alternate at least. Yeah, I'll follow this up on the mailing list and get back to you with the policy committee who is expressing interest.

All right. Okay, Kathy is asking, Juan, if you can share what our priorities—I think that might help with how critical it is for us to get a representative. So, if you're able to quickly share what our priorities are in the transfer policy working group.

JUAN MANUEL ROJAS: No, I think that I actually I will need to check, because I don't remember, but this working group is discussing about, of course, transfer policy, but if we need some related expertise. No, maybe just in understanding how the policy, domain transfer works. And to know, to study a little bit about that. That's the most important thing for thiks working group.

TOMSLIN SAMME-NLAR: Thanks. Okay, we'll resume that conversation on that on the mailing list. Now, I mentioned at the beginning that the we made the GAC PSWG for the first time after a long time. I didn't have anything to present or talk

to this one, but it's here so that we hear feedback from members who attended what they thought about it and what should be our next steps after that meeting. So, happy for folks to put their hand up and make comments on this one. Thank you. I see the chat on transfer policy still going on. Stephanie. Please.

STEPHANIE PERRIN:

Yes, hi. Well, it was an odd meeting because it's unusual for the Public Safety Working Group to be really looking for meetings with us. So one has to wonder why. And certainly, this whole business of the anonymous requests and the use of SSAD is one thing.

I continue to ask, and I asked Chris Evans, our British pal, why they would use the SSAD, and I don't feel that, much as he tried, I don't feel I got a really satisfactory answer because if a law enforcement official that has powers to request data wants data, why would they use the SSAD to get it? It doesn't really offer a whole lot of functionality. So, I don't feel like I got an answer to that question so it's still circling in my head.

And maybe it would be helpful to discuss this matter with the registrars. We haven't had a meeting with them in a while, and we used to have meetings occasionally with them when we were doing the EPDP on GDPR compliance. And so, this is certainly an issue where they have a lot of expertise and experience. So that's just a suggestion that maybe we should meet with them.

The second item that I think is a key issue is this timing because based on comments that were received during the public comment period,

ICANN staff is pushing for a different compliance to urgent requests. We discussed this at great length during the EPDP and I believe the registrar settled on three business days, and now, certainly there's pressure to come up with 24 hours for the registrars to comply with urgent requests.

Now, many registrars already do meet that timeline, particularly the big ones, but small ones may not be able to comply, particularly over holidays. That's why we use the term business days in the EPDP report.

So, personally, I don't know whether I would want to go to the wall on this one on the timelines. It's not a core issue for us. It's a core issue for the security folks working in registrars. But that's two issues right there. If anybody's interested. Thanks.

TOMSLIN SAMME-NLAR: Thanks, Stephanie. Kathy, you're next.

KATHY KLEIMAN: Yeah. Morning, everybody. Good afternoon. Okay. So, following up on what Stephanie said, I thought it was really interesting that the Public Safety Working Group wanted to talk to us. The anonymous request, I wanted to raise, seems to the ability of law enforcement to use the registration requests anonymously seems to contradict something they told us, which is the concept of dual criminality. I asked about what happens if something one law enforcement agency is researching is not a crime where the registrant is located. It is a crime where the government that's seeking the information is located, perhaps. And they

said that this will be resolved by the registrars. But how can the registrars, how can they evaluate dual criminality if they don't know who the requester is with law enforcement requester is? So I think there's a lot of work to be done here. Maybe someone on this call knows or maybe I'm mistaken, and a huge plus one to Stephanie's idea that we meet with the registrars. Thanks.

TOMSLIN SAMME-NLAR: Thanks. I think it looks like, yeah, certainly we need to discuss this more. Adebunmi.

ADEBUNMI AKINBO: I just wanted to react to what Kathy was raising the other time but you raised another flag. I raised another, which is a working relationship between the law enforcement and the registrars. For the registrants, the rules differ from country—from ccTLDs to [gTLDs.] [inaudible] Thank you.

TOMSLIN SAMME-NLAR: Thanks, Adebunmi. We could hardly hear the majority of what you were saying because it was breaking a little bit. But, yeah, once you get a good connection, or maybe you could type it on chat a bit so that we get the gist of what you were saying. Sorry about. Yeah. I don't know, Stephanie, is that a new hand?

STEPHANIE PERRIN:

Yes, it's a new hand. Yeah, I think at the heart of this whole problem, how on earth can you authenticate a law enforcement request from a country, if it's anonymous? And this is one of the issues that's been kind of a bugbear since the very earliest days. If ICANN will not authenticate requesters, and that was not part of the SSAD, then how can they assure a registrar that an anonymous request coming in from a law enforcement official, well, A, is it actually a law enforcement official, and B, what country are they coming from, and what's the dual criminality situation?

Now the dual criminality, I'm not a lawyer, but I do know that that's the basis of most of our mutual assistance treaties, and we don't cooperate with countries where there's no dual criminality. Most Western democracies have that rule in place. Other countries don't. So, this is kind of critical here, but I'm dying to see how they're planning to do these anonymous requests, and who's going to authenticate them. Because if ICANN is taking this job on, that changes the role of the SSAD entirely because there's an authentication requirement and a verification of credentials and a verification of legal status. Thank you.

TOMSLIN SAMME-NLAR:

Thanks, Stephanie. So I was under the impression that the anonymous bit is what is visible by the person whose data has been requested for, not the controller of the platform. So, the registrar would know who is actually making that request, which law enforcement agency is making the request, but they won't disclose that. That was what I understood by anonymous request, but I might be mistaken. Manju, your hand was up, but it just disappeared.

MANJU CHEN: Oh, yeah, because I was just gonna say what you said.

TOMSLIN SAMME-NLAR: Okay.

KATHY KLEIMAN: Tomslin, could you say that again?

TOMSLIN SAMME-NLAR: Yes. So, what I was saying is the anonymous part of the request is not to the registry or registrar, because they would know who the law enforcement agency is, but they will not disclose it to the registrant, the owner of the data that was being requested for. That was my understanding of the anonymous request.

KATHY KLEIMAN: Okay, if that's the case, then that's much better. Then you can evaluate, at least the registrar can evaluate dual criminality and proportionality, as long as the registrar knows—and Stephanie may disagree with me. But this happens all the time with other internet providers and platforms, that law enforcement comes in and request something, hopefully through a subpoena, and the platform looks at it and decides to cooperate or not, but the user's never told.

So, as long as the anonymity is not to the registrar, I think the process may still work fairly properly. Okay, Manju, do you want to respond and

then come up with some action items? What do we want to talk to the registrars about? Because if they push back, then the Public Safety Working Group will listen. Thanks.

TOMSLIN SAMME-NLAR: Thank you, Kathy. Manju's hand is not up, but I see Stephanie's hand up, so I'll go to Stephanie, and from there, maybe Manju might decide to respond with voice.

STEPHANIE PERRIN: Thanks very much. Well, a, what I just said a while ago about how ICANN will have to take on the role of authenticating, it's still there as far as I can see, because if these are, for instance, serious organized crime requests, do you want—and I did ask Chris Lewis-Evans about this, do you want sensitive requests like this flowing through a system? I would think the answer to that is no. If you're trying to track down human trafficking, for instance, and there's a lot of it going on so I would hope we would be honoring requests to look at that, are you going to show your hand to whoever the heck is running the system? It doesn't make sense. You wouldn't do that.

So to just go in with a wing and a prayer and say, oh, we don't want to tell the registrant about this request, it's not logical. It is not enough for serious organized crime requests. They should be looking for greater anonymity because of the amount of corruption that surrounds all of these large organized crime efforts. That's my point on all of this.

I mean if that's all they want, not telling the individual, then basically what we need to ascertain is whether the individual will ever have a right to see who gave what data to the police, and again, that's covered by legislation in most Western democracies, that sooner or later, you will get access to information about that, possibly only when you go to court. But that may not be the case in other countries.

And so, from a human rights perspective, the NCSG in my view should be pushing for equivalent human rights protection. Thanks.

TOMSLIN SAMME-NLAR: Thank you, Stephanie. Ephraim.

EPHRAIM PERCY KENYANITO: Just building on to Stephanie's comments. Just to echo, and just emphasize, a red line that NCSG should not allow is some of these requests without court orders, without due process, because, yeah, that's, that will be a slippery slope. So, yeah, I would just insist if we can just have like clear red lines and be like, this is what, even if there's pushback, we will not relent on this, it's about due process, especially just once a registrar is being approached, they need to verify is this court order and then the issues about dual criminality. Thank you.

TOMSLIN SAMME-NLAR: Thank you, Ephraim. So, Manju.

MANJU CHEN:

So I think we can make two points. First, like Stephanie has repetitively pointed out, there's no authentication process for requesters' identity. And I don't know if you guys remember, so for ASAP, there was supposed to be this authentication kind of process, but for the governments, it's for themselves to do it themselves. So it's not even any responsibility of any either ICANN org or the registrars and registries, the government will authenticate themselves, and then they give their whatever authentication to prove that they're the government. So it's like, well, for me coming from Taiwan, it's not very assuring, in a sense. So and for this RDRS thing, there's no authentication at all, because it's supposed to be a streamlined system where they don't authenticate IDs. That's why it's like simpler, so they can try out the idea.

And if we don't authenticate the requesters, we kind of give the responsibility to check the request to the registrars. And we're asking them too much, especially if they're small. It's not like every registrar is or GoDaddy or TwoCals. They simply don't have the capacity to check requests. And if they're just too overburdened with this, they might just as well give all the requesters their answers. So that would be my mainly two arguments. First, there's no authentication, and two, too much burden for the small scaler registrars. Thanks.

TOMSLIN SAMME-NLAR:

Thank you, Manju. And I see Stephanie's hand is up again.

STEPHANIE PERRIN:

With apologies for talking too much. But there was an interesting exchange between Steve Crocker and Rubens Kuhl on this whole issue, because Steve was basically arguing that, well, you guys, the ISPs are taking down problematic sites all the time. And Rubens' response to Steve was, yeah, the ISPs can take down a site. The risk they're taking is that the owner will sue them, and they take their chances. If they're satisfied with the evidence that there's a problem, which they can see, they can do that. The difference with registration data is it's under the GDPR, and there's 4% fines, as they say. So the risk is different, and it doesn't require a techie to take it down. It requires a lawyer to evaluate what their liability is in the circumstances. And that's a different equation. I thought that was a pretty relevant argument, and I'll stow that exchange away for when we're discussing this with law enforcement. I think he's spot on. Thank you.

TOMSLIN SAMME-NLAR:

Thank you, Stephanie. And yeah, great exchange. I agree, Kathy. I think that will help put that NCSG position together on this. All right. We'll move to item number six. Like I mentioned at the beginning, in D.C., this was a topic that was really hard, especially for the reason that there were talks about modifying the bylaws. And thanks, Kathy, for the offer. I'll come to you shortly.

I had actually asked our in-house researcher here to help us look at some past – that's Daniel, by the way – to look at what our past positions have been on this topic. Then we will then have that open conversation. I think Daniel put a document together based on what he

found, so I'd like him to just quickly talk to it. Then I'll have you speak, Kathy, if that's all right.

DANIEL GLUCK:

Thanks, Tomslin. And Dan here. I will be quick on this, and I just want to explain how I came about this. And pretty much our best resource for finding past positions was going through the email list. There was a public comment at one point that I'm guessing the NCSG submitted to. Unfortunately, that website is no longer live with the responses, so the best place I was able to find just the positions were in the email list.

So I went back over 10 years, as you can see from the first comment here, to see how different people felt about things. And I feel like you could boil down opinions on PICs and RVCs into a few different categories. Process-wise, it seems like just as you were talking about different registration requests and things like that, this is a GAC-led process. This was something that the GAC had brought up just as a way to sort of assuage different fears they had about different commitments and different things they wanted to add into there. So this is something that was GAC-led, and it was something that the NCSG had thought at the time was not part of the normal process. So that was one reason for the NCSG sort of having a negative view on PICs and RVCs.

Another was through substance. I think that the phrase public interest commitment at some point people had felt had been maybe co-opted or just sort of thrown in there without much backing to it. And I think that that was something that was seen throughout the years, was that even though they said it was public interest commitments, who's

holding them to that? Is it enforceable? That leads back to what you were talking about earlier. And also, that was in this year's communique, well, this last communique for ICANN 77 was something where the GAC actually, I guess they recommitted to the idea that PICs and RVCs should be contractually enforceable. But that's been something that's been talked about for 10 years, is that enforceable, and does ICANN have the compliance capabilities for that?

Last, I would say, negative part that you could focus on is scope and ICANN's role in content moderation. And is this creeping too far out to where ICANN should be? Those were the three things I found that were overarching over the years. As time went on, positions did change a bit and sort of more accepting of the process that's there, and you might as well work within the framework provided. And that was something that as time goes on, you see that, like, with the .org situation and how PIR went about that through their PICs and RVCs, and there were comments on that. And then eventually, there are things like panels in 2020 that this was discussed from the NCSG perspective.

But main things were, again, yeah, process, substance, scope of the PICs and RVCs. And I will hand it off to save time. So, Tomslin.

TOMSLIN SAMME-NLAR:

Thank you so much, Daniel. I think this is very helpful to guide our position today. Like you mentioned, it's evolved over time. So, it's good to know from looking at this what has caused us to evolve our positions and why and how that has changed. And so, with that, I'll give the mic to Kathy to please say a few words.

KATHY KLEIMAN:

Great, thanks. Dan, I'm going to include you to put this document because you were flipping through it rather quickly. I'd love to read it. I'm sure other people would. If you could change the title a little bit, make sure your name is on there, when you did this work, because it is something in motion. So, just update the title a little bit and circulate this document. That would be good. Thank you.

Let me revisit the history very quickly in my own words, which is that these public interest commitments came out of the blue. They were never part of the original applicant guidebook discussions. They were never part of what we might now call the original SubPro group, which at that point was just creating the rules for new gTLDs and their applications.

They were forced in initially by the GAC. The GAC wanted a place to put any agreements that were made, including for things that made, that some people might think made sense. Like if you had a dot medical that you agree as a registry, you're only registering it to medical professionals. This is what was called sensitive strings. We have different views on that, but this is why the GAC wanted a public interest commitment.

What happened was that Fadi, the CEO at the time, allowed anything to go in. Didn't even review it. They dumped a whole bunch of crap, and I use that word very literally, crap, into the public interest commitments, things the governments had never asked for, but groups like big brand owners and big trademark owners and big copyright owners did ask for.

And so, a number of these public interest commitments had nothing to do with the public interest. They had to do with favoring one stakeholder over another stakeholder. Many of them completely bypassed the multi-stakeholder process, which is why during the SubPro group, when we went to revisit these rules, I forced the change from PIC to registry voluntary commitment. There's nothing public interest about most of these. They are voluntary commitments, and many of them should not be there.

So, that's what we talked about at ICANN 77 in the issues forum, is not so much what the GAC wants, but this ability to throw anything a registry might want into a public interest commitment or an RVC and make it enforceable by ICANN.

So first, I'm very relieved that Tomslin says we're not talking about a bylaw change. The bylaw change that we're talking about, by the way, is the one, it's a fundamental bylaw, and it says ICANN shall not engage in content. And they wanted to change that. You can't change that. That's a fundamental bylaw. So I'm glad we're not talking about that anymore.

Now what we have to talk about is a checklist for PICs and RVCs. What is it fair to put in them? And this is something Becky Burr is thinking a lot about. So anybody who's working with Becky and our SubPro small team, please talk to Becky about what she has in her head about a checklist for reviewing future PICs and RVCs. I will stop there because we cannot do in 2025 what we did in 2012 and 2013. We can't put all that crap into PICs and RVCs and make it enforceable by ICANN. Thanks.

TOMSLIN SAMME-NLAR: Thank you, Kathy. Yeah, I think we certainly don't want to make same mistakes, and that was why I asked Daniel to help us look into the past into this. I knew that we had folks like you available to give us that history, but I was also keen to know what people who are no longer around were also saying or thinking, and that's why I asked for this to be done. So thank you, Daniel, for putting that together, and please share as requested by Kathy. Thanks.

We will move on to the AOB bit, which first is an SOI update. Manju would like to share an update on this.

MANJU CHEN: Hi. Thank you, Tomslin. This is Manju. Is everybody seeing what I'm seeing on the screen? Are you participating in the GNSO policy process and so on and so on?

ANDREA GLANDON: Yes, we can see it, Manju.

MANJU CHEN: Thank you. Thank you very much. So there's not much change to the language we're discussing, but if you can see, at the bottom, we added a bracket that says, if you are not able to provide these details or high-level description, you are assumed to participate on your own behalf or on behalf of the entity you listed as your current employer. This string of text was brought up in our last meeting, and it was added here as a further compromise.

It was actually proposed by the registries, so we are hoping by adding this, we will get the contracted parties on board, and then we will probably be able to settle on this and deliver it to the council. So that's my minor update. I'm happy to answer any questions, if there's any.

TOMSLIN SAMME-NLAR: Thank you, Manju.

KATHY KLEIMAN: I have a question. Manju, how does this help? And why do the registries want this? It seems... So all I'm going to do then is write that I work for my law firm. I don't. I work for a law school. But I'm just going to write, I work for my law firm, and I'm not going to tell you who I'm really working for. This seems to... Isn't this worse? I'm sorry. Doesn't this take us further away? This means they're not even going to say I work for a registry. They're going to say I work for myself. I have my own consulting firm. I just work for myself, and I'm not going to tell you my client is Amazon. Is that what's happening? Or maybe I misunderstand.

MANJU CHEN: Hi, Kathy. Yeah, actually, we had the same questions as you did when they first proposed it. We were shocked. We thought it's like bringing everything backwards. But I mean, like, if adding this... So let me be clear again. So if we don't have this language, what we fall back to is you don't have to say anything. And you just say, I don't want to disclose. And it's private. So that's what we're going to fall back to if we don't have this language.

So what I'm trying to do now is really just baby steps. We move slowly forward to the day when our dreams come true, which is people have to disclose whatever they're representing. But this... Yeah, Kathy, I see your hand again.

KATHY KLEIMAN:

Yeah, I'm so sorry, but this doesn't seem to get... This seems the equivalent, or maybe worse, of the private or whatever we used to answer in the past, which nobody did honestly. Because at least... In the paragraph above, and you convinced me at ICANN 77, that having to say at least that I am Kathy Kleiman, I have my own consulting company, I can't tell you who I represent, but I represent a registry client who's actively participating somewhere else in the GNSO, like the Registry Stakeholder Group. That at least clued you in that I work for someone else.

Here, I don't... Now there's not even a clue that I'm representing anybody else. I'm so sorry. I don't know how this moves us forward. And I know you're working really hard on this, but I don't...

MANJU CHEN:

Yes, yes. So the thing is, first of all, at first they wanted to delete all the "If the answer is yes, and this, this" language. I was like, we're gonna keep this. And that's why that's the first option that you have. You still have to provide a general description. So there's no... I mean, for me, it's like you can't assume what people will do, right? It's like either they feel like they're comfortable with the first option, which is yes, and they provide a brief description, or they don't, and then people assume they

participate on their own. So, for me, I mean, I don't know. I'm sorry. Actually, I'm as confused as you are. But this is why we're... I don't even know if they're like supporting this because it was brought up during the last meeting.

And for me, I'm hopeful that... Actually, because for us, the past experience is that people don't know when they're putting no, what that means, right? Oh, I'm not ready to disclose. But then they still disclose, or they're like, it's private. And then they still disclose. So we were thinking it's actually the direction that we were giving to them was not clear enough. So people were like, okay, I don't know what to put. So I'm just randomly putting anything.

Now with this clear description of what you should do, we are optimistic that people will be putting whatever they are directed, they're requested to put in. And also, the fact is, we're not able to check. So it's like, it's an honor system. You either say it as it is, or you don't. And it's like, we are the people who have to be, oh, you're here, you claim you represent these people, but apparently you're not. Can you clarify? It's our job. It's not this SOI's job to do it. It should be the people who do it when we see there's a discrepancy between their SLI, and what they're actually doing.

KATHY KLEIMAN:

There's no power of a working group co-chair to do that.

MANJU CHEN: No, not the chair, like anyone in the working group. It's a peer pressure thing. And there's no way to enforce SOI in any ways, not by Org or not by GNSO council or the working group chair.

KATHY KLEIMAN: I disagree. If we ask for it, and it's very clear someone's not doing it, if there are guidelines, and then people don't follow them, like if you didn't have what's here in yellow, and then people didn't follow that, then at least we have something to hang our hats on. But once we include this new yellow, there's nothing anybody can say that says to certain people that we know well who are representing people, very large companies actively and haven't disclosed, you have a responsibility to do it. You have a moral responsibility to disclose. If you don't include this yellow, then at least there is a moral and written responsibility to disclose who you represent, who's paying you to be at that meeting, who's paying you to be in those rooms, virtual or otherwise. But once we put this in, they've got they've got a complete out, I'm afraid, and the peer group doesn't have the—it would be much better without this. Sorry, it just would. And I know they're putting a lot of pressure on you.

MANJU CHEN: Thank you, Kathy. I have no problem for our rep—NCSG rep. Well, we don't have an NCSG rep, we have NCUC rep and NPOLC rep on the CCOICI committee to bring it up as our position. It's just, I won't be able to do it so I'll have to depend on our NCUC or MPOC rep to do it. Stephanie, I see your hands.

STEPHANIE PERRIN:

Yes, I'm basically typing this into the chat, just to put it on record. This basically, I understand that it, it seems like a good addition, but it basically guts the first paragraph. Basically, if you're not able to provide these details or a high level description you're assumed to participate on your own behalf or on behalf of the entity—that's a false assumption. If they can't provide the details, then that's because they've got a client that they don't want to disclose. So to my way of thinking, it's the equivalent of putting your fingers in your ears and going la la la, we're going to ignore the fact that you are unwilling to disclose who your client is.

And there are other relationships that are basically not what you call a client relationship it's a customer relationship so if you're actually a registry running the back end for a giant corporation and you have a lawyer working for that registry, you don't per se have a client, but you're acting in the interest of your biggest customer.

I think this is problematic. I agree with Kathy 100%. We need to yank this. And I realized the difficult situation you're in, Manju, as the chair. And I'm sorry I backed out of this committee, because then I could put my money where my mouth is. But I did. So thanks.

MANJU CHEN:

Thank you Stephanie. Like I said, I have no problem with our other reps to kind of present this position for us during the meeting, but just myself I cannot do. Juan.

JUAN MANUEL ROJAS: Yeah, thank you, Manju. Yes. This was one discussion that we have a have done some time ago. We are just discussing, okay, we need to know who are your client and why you are not talking about for yourself, or on their behalf, but the CSG people and registries is that they—there is not allowed for them to do it, to do that because they are representing a party's interest is their view and their position and there are some like legal [inaudible] and that terms, legal.

So we propose even that in order to have any—to have not these conflicts between their own perspective and their clients, we also propose that they could be a just not given any participation on any working group that they have these criteria for participation. But the discussion have been a let that they are a standing a very hardly to say that is not possible. I am not [inaudible]. And that is going on backward.

I also think that, like Manju said, or I understood, that a part of yellow, it was a good thing. But as you are showing us right now, maybe it is not. So we are going back again to the working group and present and show what are our concerns in this part of that, I think. Thank you.

TOMSLIN SAMME-NLAR: Thank you. Juan, do you want to give us what's going on on SubPro IRT?

JUAN MANUEL ROJAS: Yeah, thank you. I just want to say that we are in the SubPro IRT just starting this question. Right now, we are talking about the SPIKRT definition, the charter, and we are discussing about this document, we

are following the SubPro IRT implementation plan that is published. So we are right working in the model one is new gTLD program foundation, and we are discussing about in these meetings that—we have six meetings just before. And we as a representative come in the group, working group, since meeting three. So we are missing the first ones, but we are, with Ephraim, we are working together to being updating.

This time, we are a inside the model one, what is a new gTLD program foundation. We are discussing about predictability, language, and predictability framework, and this is the thing that we are discussing right now. Sorry, I think I can not provide more information because we know we have a short of time. But that's the thing. And the next item we are discussing is application assessing rounds, different TLD types, application submissions and further, we have registry volunteer commitments, public interest commitments, but it's farther. It's more further in the schedule. So I think that's all for now I think.

TOMSLIN SAMME-NLAR: Thank you. I see Kathy's hand is up, but I just wanted to say that if you find anything that you would like to get our input as NCSG, please do not hesitate to send an email to the list so that we can discuss it. Kathy.

KATHY KLEIMAN: Yes, Juan, thank you for being there and thank you for mentioning that you're going to be talking about rounds. I just wanted to let you know there seems to be some new pushback from the board about rounds. And rounds are very important to us, to noncommercial stakeholder group, to everybody in the noncontracted parties. Please protect the

rounds, because it gives us a time to watch what's going on and then to submit comments. If we're not doing it in rounds, then Google and Amazon are going to be able to submit 1000 applications a day whenever they want. Rounds mean that there's a very specific time for submission, and there's a very specific time for reviewing and commenting and that's where our work is going to come in, the noncommercial stakeholder group. So please protect rounds, and if there's any problem with that, please let me know and I'll give you lots of arguments about that. Lots of arguments for it was a recommendation of the SubPro working group, a strong one. Thank you.

TOMSLIN SAMME-NLAR: Thank you, Kathy. I'm sorry. Apologies, Stephanie, that we couldn't come to your AOB, but thanks everyone for lively meeting today and for being here. Thank you and hope to see you at the council meeting Thursday. And if not, see you online. Have a good day.

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

[END OF TRANSCRIPTION]