

Ozan Sahin:FYI for remote attendees, we have been joined by Samantha Eisner from ICANN Legal.

Michael Karanicolos:Where material subject to a DIDP request could potentially be withheld under attorney-client privilege, ICANN legal should review the material to determine whether its disclosure might be harmful, and should only invoke this privilege if the disclosure would be harmful to an ongoing or contemplated lawsuit or negotiation or similar process, or where its disclosure would reveal material provided in confidence by a third party, or would otherwise be subject to exceptions contained in the DIDP.

Olevie [NPOC]:00:00 UTC. Ciao ! Ciao !

Olevie [NPOC]:Have a nice end of meeting and safe trip back to home for all. Keep up the great work !  
Warm regards

Anne Aikman-Scalese (IPC):By way of example, if ICANN Legal has advised the Board and CEO that it should avoid the risk of being classified as a "joint data controller" under the GDPR - e.g. by suspending operation of the WHOIS obligation in the Registry Agreement via the Compliance Department statement of non-enforcement, they likely do not have to tell the Community about that recommendation because it is subject to Attorney-Client Privilege.

Anne Aikman-Scalese (IPC):Indeed Samantha - ICANN Legal must protect the ICANN corporation from risk by providing advice that limits risk. ICANN Legal has no authority to waive the privilege without Board direction to do so. (I am not a CA lawyer but I am sure the Rules of Professional Responsibility would be the same as AZ and OH on this point.)

Anne Aikman-Scalese (IPC):Agree with Samantha on this.

Anne Aikman-Scalese (IPC):Right. If the privilege is waived, it can no longer be asserted - even in the discovery process in litigation by third parties.

Mary Wong:Here is the link to the Transparency Sub Group wiki page, but I am not sure where the minority statement may have been documented:[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_community.icann.org\\_x\\_mBWOAw&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl415cM&r=SJoAZJPf4sll7c5HM-90jeUSDBNV8i1H6DgohUn1\\_U&m=0LYRRLOs1sF5paqtqiASKWzRuA-Al6b28kQjNPXWkTM&s=QITQvy30PB3HXzC5bmb1TFkrOZ9yhizE1qStoqWiqd8&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_mBWOAw&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl415cM&r=SJoAZJPf4sll7c5HM-90jeUSDBNV8i1H6DgohUn1_U&m=0LYRRLOs1sF5paqtqiASKWzRuA-Al6b28kQjNPXWkTM&s=QITQvy30PB3HXzC5bmb1TFkrOZ9yhizE1qStoqWiqd8&e=)

Steve DelBianco:the Minority Report recommendations are: we further recommend that ICANN immediately adopts, and directs its advisors, agents and attorneys, as follows:1. Recalling the commitment to transparency in Article 3 Section 3.1 of the Bylaws, the mere fact that attorney-client privilege is available to ICANN in respect of a particular contemplated disclosure shall not be considered, of itself, reason to assert that privilege or otherwise withhold disclosure.2. The mere fact that disclosure might assist a claimant or potential claimant in a case pursuant to the Independent Review Process shall not, of itself, be considered sufficient reason to assert attorney-client privilege where that privilege is available.3. When considering whether to make disclosure in connection the IRP, ICANN shall have regard to the "Purposes of the IRP", as set out in Section 4.3 of the Bylaws, and shall consider those purposes as amongst ICANN's objectives.

Anne Aikman-Scalese (IPC):Okay Steve but ICANN Legal has ZERO authority to waive the privilege. The recommendation would have to state that the ICANN Board itself adopt something in this regard because I don't think anyone at the staff level could possibly waive the privilege without authority from the Board to do so.

Steve DelBianco:@Anne -- Thanks. would be grateful for your advice about implementation of recommendations in the Minority Report. Sending to you now

Anne Aikman-Scalese (IPC):Okay

Mary Wong:Note that a Cross Community Session has been scheduled for ICANN61 on the topic of transparency including ICANN's Open Data Initiative and Information Transparency Initiative .

Mary Wong:(as Sam is now saying)

Ozan Sahin:ICANN Transparency session has been adjourned. Thank you!

Mary Wong: Taking advantage of the changeover lull - note that materials from this morning's webinar on GDPR have now been posted: [https://urldefense.proofpoint.com/v2/url?u=https-3A-www.icann.org-resources-pages-data-2Dprotection-2Dmeetings-2D2017-2D12-2D08-2Den&d=DwIFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=SJoAZJPf4sll7c5HM-90jeUSDBNV8i1H6DgoihUn1\\_U&m=0LYRRLOs1sF5paqtqiASKWzRuA-Al6b28kQjNPXWkTM&s=IV\\_v5xOeOZJqxBwb0R9q024PwUAPVB13HC42QqPM-Vk&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A-www.icann.org-resources-pages-data-2Dprotection-2Dmeetings-2D2017-2D12-2D08-2Den&d=DwIFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=SJoAZJPf4sll7c5HM-90jeUSDBNV8i1H6DgoihUn1_U&m=0LYRRLOs1sF5paqtqiASKWzRuA-Al6b28kQjNPXWkTM&s=IV_v5xOeOZJqxBwb0R9q024PwUAPVB13HC42QqPM-Vk&e=)