

**ICANN
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GNSO – CSG Open Meeting
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Brian Winterfeldt: Great. Good morning everyone welcome to the CSG open meeting. A special welcome to any guests that are joining us here today. We have information sheets from each of the three constituencies that make up the CSG. So please help yourself and consider joining any of the three constituencies. I'm a little partial to the IPC but they're all very excellent choices.

My name's Brian Winterfeldt. And I'm President of the IPC. I'd like to introduce my fellow chairs Wolf-Ulrich Knoben is chair chairman of the Internet Service Providers and Connection Providers Constituency with the ISPCP. And Claudia Selli is here as well chair of the BC, so welcome to them. And Wolf is here and Claudia is on the other side.

Today we will hear from the NomCom, have a discussion with our ICANN CEO Goran Marby, hear from the newly (unintelligible) SSR2 or Security, Stability and Resiliency Review Team, and leave time for any open discussion or other items of business that folks would like to bring up. But since we're starting a few minutes late and I understand things need to be run very strictly here timewise in this venue I would like to turn it over to our guests from the Nominating Committee to give us an update.

Tom Barrett: Thank you Brian, I'm over here. Tom Barrett we're actually from the NomCom Review Working Party. So we're not from the NomCom itself. So this is the one of the review that ICANN likes to conduct every five years. And so we're

– it was done five years ago for the NomCom. We're doing it again. And generically there's a guidebook that ICANN has where there's seven steps as part of a review. We're in step five.

So we've already accomplished going out to an independent evaluator who interviewed dozens of people within the community, published a draft report which many of you provided comments on. They published their final set of 27 recommendations in the June timeframe. And we're now going through what we call a feasibility assessment phase where we look at those 27 recommendations, see if the working party agrees with them or wants to refine them in some way. And then we'll make a recommendation to the OEC, Organizational Effectiveness Committee of the Board where they will make a recommendation to the full board. And then we go into what's called the implementation phase of the project where all the changes that are recommended will go through a detailed implementation plan.

So we've distributed a hard copy of what we are calling our scorecard for the review. And I know many of you can't read the screen but what we've done is there are about 14 members of this review team who have met ten times since the, since June since the draft report was published. And we're about 3/4 of the way through our process of evaluating the feasibility of each of these 27 recommendations and coming up with an initial implementation plan for them.

If there's an overarching theme to this review that we've heard back from the community that is that the NomCom needs to perhaps evolve with the new structure within ICANN where there is empowered communities so that it becomes more accountable for that community and more transparent in its operations. And so there are several recommendations designed to achieve that goal to perhaps Angie if you could bring up a few of these. One of them for example is this idea of a standing committee which would help the NomCom interact with the communities, take care of process related issues such as how does its recruitment, its assessment, how it determines its

budget, what kind of skills could be developed in terms of - to make sure that NomCom members are well equipped to appoint members to the board, et cetera. So I want to make sure you get that overarching theme in terms of what we're trying to accomplish.

The scorecard we passed out to you has all the categories grouped into, all the recommendations grouped into five categories. So there's a group for skills and training, there's a group for the recruitment process, a group for the evaluation process which are all somewhat mechanical in terms of how the NomCom operates. But then there's a category that we call charter which could well impact how the bylaws and the NomComs as a category related to how the NomCom interacts with the rest of the communities.

So I thought we'd just maybe discuss a few of those to get your feedback on. There is a desire, one of the recommendations talks about rebalancing the NomCom. So there's some parties feel like they're not represented on the NomCom and as you know there's also an open seat on the NomCom that's supposed to be filled by the GAC that's never been filled. And so perhaps it's time for the community to examine whether - how they determine who should be represented on the NomCom if that model is even right anymore or if any changes are warranted.

There's also recommendations about non-voting members becoming voting numbers. That covers SSAC, RSSAC IAB. There's recommendations about two-year terms instead of one-year terms. But I think the, you know, the ones that you might be most interested in is the relationship of a NomCom to the empowered communities so to speak. And how the empowered community can help the NomCom and its process and perhaps insure some what we call professionalize the NomCom process to make sure it's recruiting the right caliber of candidates for the board and other bodies. So I'm going to stop there and see if I don't know if people have questions or if want have any particular topics they want to discuss. Marilyn?

Marilyn Cade: Thank you, Marilyn Cade. I'm a member of the BC. And many years ago was a representative on the Nominating Committee in the days when we, very early days. So we didn't have a lot of staff, and we didn't have a lot of resources, there was no travel funding, et cetera, et cetera. So I want to put into context how long ago my experience was compared to where we are now before I ask my question.

I personally -- and I have not a chance to discuss this with BC colleagues or others -- but I personally have significant concerns about creating a new layer called the standing committee or anything else. The role today of those who send Nominating Committee members is a direct role of identifying someone that they trust and respect from their community to go to the Nominating Committee. And while there's no reporting relationship because once you're appointed you act in your individual accountability and responsibility.

But it is still a direct path. And I am not in favor of creating new layers to solve what's to me sounds like an administrative documentation process and orientation process as opposed to having another group that would have to also be chosen from the community, argued over, debated, how many people, what were their qualifications. And they would be in an unusual roll to the Nominating Committee members including having access to information that the rest of the community does not. So my question is why is this even being considered? And my part B, is and what's it going to cost us financially?

Tom Barrett: Thank you Marilyn. Those are great questions. So the objective of such a body and maybe the word body isn't quite the word. But the idea is there are some process issues that seems to be made up every year by the NomCom it lacks what we call institutional memory. And so it seems to reinvent the wheel every year. So that's the feedback we're getting. And so there needs to be A, some consistency how the NomCom operates rather than reinventing the rate wheel every year.

It could well be that it's folks from this group are just part of your normal process, every year you take a look at the past NomCom and say okay were the right processes followed in terms of accountability and transparency. It's strictly process related. It's not intended to help do the NomCom process or cycle itself. It won't be privy to any confidentiality that's happening within the NomCom cycle. So they would not have any knowledge that the rest of the community would not have access to. So it's not intended to supplement what the NomCom does in terms of selecting candidates specifically but it is intended to solve a dysfunction that people are pointing out about the lack of institutional memory, and consistency and sometimes professionalism in terms of how we recruit and assess candidates.

Jimson Olufuye: This is Jimson Olufuye BC. Now the second part of our question that what would it cost what my interest here is that there is a potential for us to witness a cascading effect. Bear with me there's the potential for us to see a cascading effect like some people will say that let us have an empowered group of former board chairs maybe a vice chair or something again and as soon as before. So I think documentation can take care of the issue of (unintelligible) of memory.

Like BC we've been talking about big projects that has to do with proper documentation so that there can be (unintelligible) memory. They're looking for information you can actually get it. So I don't, I think there is of course more money and now we are looking at trimming down the budget. So I think it might not be something we should really go forward with my opinion. Thank you.

Marilyn Cade: Am I going to get an answer to part two of my question?

Tom Barrett: So obviously the community decides its budget priorities. And they'll have to decide how important it is to improve board governance with and ICANN. And, you know, I'm not going to debate this budget versus others but this has been identified by many, many other constituencies as an issue that impacts

the efficiency and productivity of a NomCom as you know which appoints half the board. So there are a lot of the different voices we're listening to.

We don't know that the budget impact. As part of our feasibility report that we submit to the board will be a, you know, initial implementation plan that takes - makes an effort at identifying money, resources, et cetera, to implement each one of these recommendations, so this is one of 27. I will make a, give a report to the board. And they'll make a recommendation to in terms of implementation keeping in mind what we think the financial implications are.

Brian Winterfeldt: Thank you. Greg, if you can make your question very quick as our next guest is already here.

Goran Marby: I'll pass since Goran is here. This is obviously a conversation that's not going to stop at this point.

Brian Winterfeldt: Great. Thank you so much. Tom, thank you for joining us today and thank you for updating and answering our questions.

Tom Barrett: Thank you very much. We do have a wiki. All of our work documents are public. We invite anyone who is interested to give us feedback on our draft documents. We would welcome any to continue this off line if you'd like.

Brian Winterfeldt: Great, thank you so much. We really appreciate you joining us today. Next we have our discussion with our CEO, Goran Marby. Before we begin I want to remind everyone that we are going to try and divide the time fairly between constituencies. So we're going to do a round-robin when it comes to the Q&A portion so that members and guests from the various constituencies will have close to equal time.

So we're going to try and manage the queue carefully. I've asked Kiran Malancharuvil our IPC Secretary to help me manage that process. So Goran welcome to the CSG open meeting. I know you have a lot of meetings today

so I wanted to just remind you that you're here with the IPC, the BC and the ISPCPs. And we'd love for you to make any opening remarks or statements that you'd like to make to us as a group.

Goran Marby: Hi. In the essence of time because I think we're all stressed. And I'm actually double booked right now so I left a meeting with the Contracted Parties and they also expect me to come back again. So why don't we fire with questions? Please start.

Brian Winterfeldt: Great. Can we start a queue for questions?

Goran Marby: If you don't have any questions I can always talk about but it's sort of not funny.

Brian Winterfeldt: Steve?

Steve DelBianco: Hi. Steve DelBianco, Business Constituency. Goran, on the topic that we covered yesterday, when you called me Brian which is funny...

Goran Marby: Sorry.

Brian Winterfeldt: Isn't that the highest of compliments?

Steve DelBianco: Indeed. And I enjoyed the way it kept going. It was too funny.

Goran Marby: Sorry. I mean to my defense I also ended up calling a lot of people Susana yesterday for reasons I don't know either. It has something to do with my brain in an ICANN meeting.

Steve DelBianco: Well I hope it wasn't your brain became befuddled by the point the BC made since we thought it was abundantly clear before that we supported your efforts to have ICANN step up to be primary or full controller for purposes of the unified access. And when I asked, how can we help you didn't have

anything that you wanted to offer at least at that point. So we are anxious to understand. The question for you would be this, have you thought any more about that and how do you believe we can be helpful in advancing that in parallel with the EPDP because we need both? We need a PDP that covers the collection and distribution of data, the individualized queries that registrars and registries receive, that's the reasonable access part. But in parallel the unified model is really the point of arrival we all seek. So how could we be helpful at advancing that particularly in the European Union?

Goran Marby: Thank you. It's a very good question and sort of evolving answer. One thing that I'm planning to do which I said yesterday is to set up what I call a technical study group. And with this I mean extremely technical because as you know we have different, we have one thought ID how to diminish the Contracted Parties legal responsibility through a technical solution built on RDAP. The Contracted Parties send a very good letter supporting us in that effort but there's also a lot of questions so one of the things that we are planning to do is to set up a technical study group.

And just to remind that this is not to where it's going to be talked about what is really the purpose, or who, you know, how do people get accredited or anything else. It's just talking about things like how do you step up this, how do you do a federated security solution that is in line with some of the positions in the law when it comes to logging and stuff because that is a very important order to do. So by concentrating on that to see if that technical solution with questions comes around that could be what we could ask the BPAs about.

At the same time we set up a process as you know where we asked you for comments on a sort of overarching unified access model which includes some of the questions you're engaged in. And as we did during the consulting model -- which I promise never to come up with another name again ever -- that is where we really looking for your sort of knowledge when it comes to, knowledge or ideas when it comes to the overarching unified access model.

So I would ask you very humbly to continue to engage with us in that process. We have any many questions we need answers to and we really would like to have your input.

Thirdly as I - we did last time is if you have questions that you want us to send of the data protection authorities we will of course as we did last time give you an avenue for doing that. So let's take a step back now. First of all the one thing that is important is, is that we have to be within the constraints of the law. And we, and the problem is that not, some of those things that we're talking about was not really well defined in the law. So that's where we need of guidance. Some things are fairly strictly and written the law like the role of a data controller. So in any discussion we have with the DPAs their first comment will be you have to be within the law. And that is sort of a firm mark that we're not trying to change anything. It has to be within the law whatever that is.

The second thing is as I said for the last six to nine months we are sort of stretching the possibility to do this. And I'm not going to give you, you know say that this is a slam dunk. That's why your support together with the Contracted Parties together with anyone else was so important yesterday. Yes we recognize the roles of the Contracted Parties as data controllers. We recognize this and we think this is the problem because the DPAs also wrote back to us a while back ago and asked us really to come up with a solution for at least police forces.

And that is the, that's what I saying to them, will say to them that we are now as a community trying to provide you what they asked for but doing that within the constraints of the law. So I'm, you know, I'm - I remember about was it a year ago we had this very nice friendly conversation where we said that we, you know, we said in the room that you won't get any advice at all from the DPAs. We were able to do it because we were stand up as a community and asked the questions. That's why the multi-stakeholder model actually makes a difference. So the process right now, you know, go back

that's where we really need your input and support and that is the overarching thing. On the sidelines I'm trying to figure out if it's actually legal within the law not to do it.

Steve DelBianco: And George I have one follow-up, one follow-up.

Goran Marby: I love ICANN. I have one of the best jobs in the world. I do.

Steve DelBianco: You do. I just met with a commission official who had some advice and said that as the unified access model RDAP controller ICANN would want to avoid accumulating the responses. This is just part of the technical study group advice I want to feed in early. It's fine to log who did the queries but don't store the answers that came back because law enforcement would get nervous about that. That's the kind of advice that if we get it early it informs our proposal. And it came from a very good source. Thank you very much.

Goran Marby: So we have asked the European Commission during this meeting to help us to ask the questions to the DPAs because they wrote the law so they should be able to frame the questions. It's, I mean it is also for us the community a little bit of stretch in the sense that we still go back to having correct statements from the DPAs who believes that we have one database. So we, you know, we are in the collective efforts to do something to do this. And I'm not allowed to say that I think I have the whole community behind us because I don't but I think we have a fairly large portion of the community now identifying the problem and trying to make it all work. And it makes me very proud because that's what ICANN is all about. This is the first time I say this during this ICANN meeting. I think I'm going to say it about 15 times more before I'm done.

Kiran Malancharuvil: So in the queue we've got now the BC has had two questions. So I'd like to take a question from Brian Winterfeldt in the queue from the IPC. And I'd like to try to get somebody in the queue from the ISPCP please. Thank you.

Brian Winterfeldt: Great, thank you Kiran and thank you Goran for being here again. We are optimistic IPC about the prospects of a long term solution found by the community for access. We're looking for help to understand how the current Temporary Specification on gTLD registration data that's already been approved by the board allows for access to nonpublic data for compliance, cybersecurity and IP and consumer interests. This is critical to us as you know given the harms that are being faced by those in the community as a result of the fragmented Whois that we have right now. How can we expedite an access solution under the current temp spec or find some type of interim solution well we await this longer term policy work?

Goran Marby: Thank you Steve. I mean the temp spec quotes the law when it comes to access. And the law provides the opportunity for access to information. There's no doubt about it. The difference is that we talked about a unified model. And the way it's defined today with the role of the data controllers -- we have discussed of this a couple of times -- the role of the data controllers are fairly firm in their obligations. That means that the Contracted Parties according to today's definition has that responsibility. And the problem is of course that, you know, it's not only the fines it's also the sort of moral obligation that you have to take on. And the whole law's intent is to put the data controllers sort of in charge and responsible for the data, so that means that, which I think we've said for a long time, is that we sort of at a catch-22.

And the catch-22 is that if ICANN Org doesn't have the legal responsibility or diminish the legal responsibility for the Contracted Parties ICANN as an institution has nothing to do or say when it comes to the sort of an unified access model and that's the catch-22. And I actually am a strong believer that the ICANN community is a better - is a very good place to do those balances. But because we're talking about a law it's very hard for us to have that because we can't tell the Contracted Parties and this within the law how they should give access to that information. And so you can see my attempt right now from many different viewpoints but you can also say that it actually gives

the ICANN community say about who gets access to the data because in simple terms right now we can't.

Brian Winterfeldt: So just a quick follow-up. I certainly understand the dilemma that we're in and the need or desire for a really clear guidance before we move forward with some kind of unified access model. The reality of the situation we're in right now as you know is that the language in the temp spec is incredibly vague and allows the registries and registrars to make their own decisions about how to approach granting access. And that's what's created a lot of challenges. We met earlier this week with one of your staff members Manu Sarad from compliance who pointed out to us the challenges that her department is facing and even beginning to think about how to deal with any kind of enforcement around access requests. And in fact many, many of the Contracted Parties that she's told us that they're interacting with have not even put in place yet a system for dealing with access. So I think rather than our request being about necessarily even putting some kind of full blown framework in place rather some kind of requirements or guidance that would actually help put some rules of the road in place while we await some kind of larger framework. Is that a possibility?

Goran Marby: I mean here and again the problem is it is the Contracted Parties who have that obligation to make that decision. We can streamline and we can put any of the data, the law is very specific in the fact -- which is what I am very happy that I got your support on -- is that there, that is the problem. The single or -- and that's not a bank. That's the actual meaning with the whole legislation that the one who collects, data has the data, process the data, has the responsibility to make the decision about users.

And we talked about this many times that the Whois as a system is not I don't you know is not defined really to fit a frame of the law which is natural. The law is built around the fact that you for commercial reasons take in data, you have that data and use that data. And you have to use that data for a sort of limited purpose. We all know this. It's a symmetry in the law that you make

those decisions. The Whois situation is very strange from a legal perspective, well we ask them to store that data but we don't store it ourselves.

ICANN Org has a very limited use of that data. And I don't know if you remember that when I got very early on in the process we gotten advice from the DPAs who said you can use this data according to your incorporation in California whereas you might say it's a very limited scope because I don't usually do trademark things. So what the users of the data outside ICANN in that sense that the 4.2 billion Internet users is actually the one he uses it for different reasons. And that is what creates this symmetry that we're working on. And that's why it's so important that ICANN Org and ICANN as an institution actually gets back, get back the possibility that to either challenge some of those notions are actually having a conversation about the purpose of it.

I mean one of the – and I know one of the interesting things is that we talked about this as a public interest. ICANN is providing a service to the world for public interest. The interesting thing is that the law actually defines public interest. It says that, you know, through legislative actions you can have something as public interest. But the problem is that in the law it says the only one that can do that are countries or the member states of Europe. So we are very much, you know, we are trying to be within the law that is fairly strict in one sense and fairly undefined and other sense. But together we can I think we can work that out. But there's no single solution to it because the intention of the law is prevent what you're asking for.

Brian Winterfeldt: Yes. And I definitely appreciate that. One just tiny follow-up point and I think this is where I know you've, we've had this conversation as well about sort of the from our perspective sort of over compliance of temp spec one because GDPR as you know actually is not a global law. And we've also failed to make the distinction between legal and natural persons. And so it seems like we could certainly talk about putting some kind of framework in place for

things that don't have a European nexus or from legal entities that are exempt from GDPR within Europe.

Goran Marby: All right the debate if we are – well I have other meetings this week when they're going to say that we're all, we're either over compliant or under compliant. The work on the expedited PDP is an important one. I think that some of those questions you raised we specifically asked the BPAs three times and we got the same answer back. So I'm looking forward also for the outcome of the expedited PDP where the policy works really.

You know that's where it should happen and not by me. We've done the temp spec according to what we think is the based on a device – advice we got and based on the long process the (unintelligible) process leading up to it. I'm totally aware that not everybody agrees with it which probably made be happy because if everybody disagrees then I'm probably find a good way forward with this in the legal framework. If someone was actually happy with it I would be more worried.

Kiran Malancharuvil: Thank you, just a quick note about the transcript. Please say your name before your speaking. And it is a hilarious joke with the names but it's making it extremely difficult for our transcribers. So I love Chantelle and I would love to protect her forever so it's hilarious but please don't. Real names only please and I will now turn it over to our callers in the ISP CPU to take the remaining time.

Yes thanks Kiran. My name Wolf-Ulrich Knoblen, I'm the Chair of ISPCP. We could have also have a related question but that would be a question with regards to the Internet access at all. But that I could fit to the item we are discussing right now. So I decided well to put the question which we are also have to write it to the board in the afternoon to you as ICANN Org as representative of ICANN org related to the what you're touching in your last role with regard to the role of a data controller.

So the question was with respect to Whois so far ICANN Org has not acknowledged having a role as data controller but now claims it wants to be the coordinating authorities with system. The ISPPi interested to learn more about the, your position on this attitude in particular with regard to the responsibility ICANN Org is willing to shoulder with regards to a GDPR. And I know that over the last days or weeks there has been a development in this area where discussions on that but I couldn't follow directly and so we it could be happy if you could clarify a little bit your position on that. Thank you.

Goran Marby: I'm a little bit surprised with the question because we went out in to, August 2006, '17 and declared that we are a data controller so that we have not set up. But here comes the catch. We are a data controller for the specific use we have of the Whois data because we don't have the database. But we do use that data because GDPR an excuse me for saying this anyone is a virus. So when we get the data for instance for compliance and data retention for that instance we become a data controller but only for that use.

And I'll give you a practical example. So the Whois data is now stored at the contracted parties. And they for some reason decide to sell this information to someone which is outside the law. We cannot have a responsibility if they break the law for data they have. That's why they are the data controller in their instance of the Whois. But we always said that we have a lot of responsibility. And the fact what we did and, you know, why this is logical is because we actually stood up and I stood up and said that we, ICANN Org has to make a decision about how we're going to be compliant with the law.

And that's what started the whole calzone process. Otherwise we wouldn't have done anything. So I had doing, when I woke up then because that's where (unintelligible) sort of come to my table I went out I think it was in South Africa. My ICANN meeting gets blurred. And by the way, this is Goran for the record. I forgot to say that.

Kiran Malancharuvil: Thank you.

Goran Marby: Sorry. Or I would call myself Brian. So we stood up and said that what's this, what is strange for this process is that in the end we have to make a decision how to make ICANN Org legally compliant. So I will I, you know, we said from the beginning that we were sort of data controller for the users of the Whois data for us. But we cannot take responsibility and cannot by the law take responsibility if the Contracted Parties uses data outside the law. So I hope that was an answer to your question.

Kiran Malancharuvil: So I see Greg Shatan's hand up but we are now on BC rotation. And we've got Fred Feldman in the queue from Facebook BC member. So we'll go to Fred and then Greg.

Fred Feldman: Just a follow-up to this last question, yesterday in the public forum there was this all some sense of collaboration and collegial sort of activity between the IPC and the BC Vicky, and Kiran and also Elliot. And I think Elliot asked her really important question in that session which was, you know, how can we develop a, you know, standard for this to be a lot smoother? And I'm wondering is there way informally if it's not illegal under the law to actually help us get together with the Contracted Parties to establish a common framework that we might actually have a really easily agreed upon way for us to get this data from them when it's legitimately required?

Goran Marby: Because I'm on the record maybe I shouldn't say what I think but it could include vodka. However I've been a strong proponent and I have facilitated towards to reaching out in this question. I think I was, I did my best to I think I got you at least the IPC in the room together with the Contracted Parties very early on which led was a very important import into the calzone a model. And so I'm, you know I'm all for it. And anyway I can do to facilitate the discussions I will do.

But I also want to make sure that we sometimes I have a very strong position when it comes to my interactions with the community when it comes to

policymaking process. And you, some people might not believe me much but we have done a change since I came on board about ICANN's staff some role on the policymaking process in this. I'm trying to draw a line in the sand that the policymaking process belongs in the community. Your cooperation belongs in a community. I want to facilitate that.

My role is to provide like I get a questions about you have never said you were a data controller and I say yes we were, we did that. So be sort of a factual check to be a real advisor to try to – now if you have legal questions my team will ask them without taking sides. The problem is that sometimes by giving an answer we seem to take side. But we are really working hard to facilitate the discussion because I wouldn't believe in a multi-stake holder model as much as I do if I accidentally this work to the bottom up process.

And I, what I think, what I agreed with him yesterday a lot about was the simple fact that he said gee we are now talking about privacy from a legislative sort of legal fact. And I've said very early on, and I repeat myself we should never do but I said that ICANN is an organization or institution should actually talk about privacy and the broader terms, not about the databases itself. We have thousands of databases because Internet was built upon transparency and accountability going together.

It is an essential question that I think that we as individuals or representation for companies whatever we do should have that conversation. And I, you know, we don't have a policy for Whois. We don't have a privacy policy. And I think that when we go – I'm dreaming now. When we go through this hurdle maybe the community can engage in that kind of conversation. And I agree I was very, very happy and I was actually quite proud of working within the ICANN institution during the open sessions yesterday because I think that was a very, very good way to move forward. I unfortunately have to leave because I have the Contracted Parties House waiting for me.

Kiran Malancharuvil: Can you take the final, one final question?

Goran Marby: Oh sorry, yes one final question.

Kiran Malancharuvil: Greg Shatan had a question.

Goran Marby: Of course, always open for questions from Greg.

Greg Shatan: Thank you Goran, Greg Shatan for the record. This is probably not the place especially not the time given that you're on tenterhooks to leave to debate interpretation of GDPR but I think that the issue is not just merely whether you're a data controller but in what sense you're a data controller. Data controller is ICANN is not merely a corporation that needs - that contracts for its own purposes but really contracts on behalf of the community and for the ecosystem? There needs to be thought about how they would take on the responsibility of being in the data controller in the broader sense because we are not all individually contracting.

ICANN is a generous organization. And to say it's only a data controller merely for its own internal corporate purposes is really not the entire, it's not the entire question it's not the entire answer. And again when you instruct controller, when a controller instructs third parties or processors, you know that's also part of being a controller. So there's, you know, bunch of nuances here that I think don't, you're not as, you don't need to be as rigidly in the swim lane that you are in. And part of that obviously has to do with interpretation that we could talk about it at much greater lengths. But I think that's - there's a somewhat cramped interpretation here. I understand that may be for liability purposes but I think it's still is cramped given ICANN's unique role.

Goran Marby: Greg. A lot to discuss with you. This - I mine I don't even now I...

Brian Winterfeldt: Fantastic everyone. We are back up and running. Thank you to Chantelle and our team for restoring our functionality. So if everyone could please take their

seats we're going to go ahead and get started. I would like to welcome our next guest, Russ Housley who is chair of SSR2 who's going to give us an update on his recently on pause team.

Russ Housley: Good morning. I'm Russ Housley and I was asked to provide a brief explanation of where we are so I tried to put the slides together to do that. Okay. This isn't doing.

So as we go through these slides I'd like you to think about whether our plans cover all of the necessary elements that you think the SSR2 should cover and whether this was as the material is presented think about whether we have the focus that you think would be interesting to the community. So the agenda is where we are today, what are scopes and term of those reference are, where we are in our work in our timeline and outreach and your input is indeed sought. So the SSR2 team was reconvened in August after being on pause since October 2017. At our face to face meeting in August we met in Washington and we welcomed five new members and we also had a bunch of people and resigned in the interim.

We selected new leadership. I was selected as the chair and we have three vice chairs. We reviewed the work that had been completed up to the pause and we updated our scope and terms of reference. We updated our work plan and are moving towards getting the substantive work done and we do encourage community input throughout this process.

So last month we sent a note to the board, the SO AC chairs that contained the scope and terms of reference. Those are also available on our wiki. The URL in the slide will take you to that if you really want the details. The important thing is that this is totally in line with what's called for in Section 4.6C of the ICANN bylaws which is the one that says the SSR will take place every five years, tell us what we need to do. So that also includes the high level milestones, the leadership responsibilities, the membership, how we're going to make decisions and conduct our work, our commitment and plan for

outreaches in there as well. And the last bullet on this slide shows a quote from the bylaws. I'm not going to read it but we didn't feel we could remove any of those words but the point is that's what we're going to do.

So the work is basically broken down into four streams. The first three are things the bylaws says we must do and the fourth one is something the bylaws say we may do. So the first one is that we have to review the recommendations from SSR1 and the implementations that are attempted and say whether they have attended affect so we're more than halfway through that.

The - another thing we need to do is look at ICANN's keys securities stability and resiliency activities. And that is one of the things that's on deck to for Wednesday actually to start doing more on that. We did a lot of data collection before the pause but we'll be going through that.

We also have to look at the SSR related things of the domain name system focusing on the things where ICANN contributes to or facilitates them. And then the thing we may do is look at future challenges. So we're hoping to do some of that but we are trying to put forward a very aggressive schedule but we think there's some things there that are useful to highlight. This is our very aggressive time schedule. Basically before this meeting we, as I said we updated the scope and terms of reference outreach plan and so on.

At this meeting we're having face to face sessions of the review team and we're doing engagement with community. Between this meeting and Kobe we will be gathering assessing facts and creating a draft report. In Kobe we expect to do presentations on that draft report and immediately thereafter begin a 40 day public comment period and then after Kobe the intent is to deal with whatever public comments comment on the report and produce the final report before the next meeting, Marrakesh.

So your engagement is requested. This is a community review team. We want the community to help. There's a bunch of ways you can do that. You can send input to us directly with the email address that's up there. One warning that is a publicly archived list. You can provide comments and engagement sessions and you can become an observer if you wish. The MSSSI secretary can set you up to do that. And if you want to follow the work the wiki is of course open and public as well. So thank you and if you have any questions I'll be glad to entertain them and pass them to one of the review team people who are in the room.

Brian Winterfeldt: Great. Thank you so much. Any questions? All right.

Goran Marby: Thank you.

Brian Winterfeldt: Thank you so much for joining us today. We really appreciate it and we're really thrilled to hear that you guys are back on this important work. So we are going to move to other areas of business. And the first item on the agenda I'm going to recognize Malcolm Hutto. Malcolm?

Malcolm Hutto: Thank you. My name's Malcolm Hutto. I'm a member of the ISPCP. I'm also a member of the IRP Implementation Oversight Team. The IOT has been working on draft rules procedures so that the IRP can get going under the new bylaws, the new accountability team post transition. We've been doing that for some time now. The IOT has just put up draft rules and procedure, the interim draft rules supplementary read rules and procedures for approval by the ICANN board on Thursday.

Unfortunately there's a problem with this. It relates to the deadline for filing. The deadline for filing has complicated structure but the effect of the way that this - the way the clock starts running is that if an action by ICANN is not implemented for 12 months and therefore does not affect anyone for 12 months that action or decision by ICANN will never be capable of being brought to the IRP for challenge for consistency with the ICANN bylaws at all.

Now the IOC has consulted on this specific issue twice, once in December 2016 and again in July and August of this year. The first time the IOC proposed this rule as is going forward each member of the CSG as the IPC the BC and the ISPCP all wrote to protest that proposal and asked for it to be changed. So did the MCSG and the Registrar Stakeholder Group. It was then changed and the second public consultation was on the basis of a rule that would not cause this problem.

The ISPCP and the BC wrote to that – and replied to that public consultation to welcome that change and ask for it not to be reverted, so did the NCSG and the Registrar Stakeholder Group. The interim rules so-called that have been put up by the ISC for approval on Thursday do the opposite of what was suggested in the consultation over the summer and that we welcomed and if adopted as I say will ensure that actions of intent that ICANN is potentially capable of immunizing itself from challenge in the IRP simply by not implementing or because it's impossible to implement or it was unable to implement things within a 12 month period.

This is inconsistent with the ICANN bylaws in several respects. The ICANN bylaws specifically points out - set out the purposes of the IRP to ensure that ICANN does not exceed the scope of its mission and maintains its otherwise compliance with the articles of incorporation and bylaws and that it is there to provide a mechanism for the resolution of disputes as an alternative to legal action in the civil courts of the United States or other jurisdiction both of which purposes will be defeated by adopting a deadline that would enable ICANN to immunize certain broad actions from IRP review.

The bylaws also require that the rules of procedure comply with international arbitration norms and require that they be consistent with the purposes of the IRP. The bylaws also require that the rules of procedure ensure fundamental fairness and due process and that sets out that the deadline for filing must be based on a date after the claimant becomes aware or recently should have

become aware of the action or inaction giving rise to disputes rather than being based on the data the action or decision itself as is included in this proposal.

The IRP Implementation Oversight Team have engaged in independent counsel, Sidley Austin, LLP which has written to the twice to advise of concerns that the deadline in the form proposed in the interim rules now before the board is not compatible in the bylaws. In June 24 2017 they wrote applying a strict 12 month in the next – in the IRP claim that commences at the time of the ICANN action or inaction and without regards to when the invalidity and material impact became known to claimant is inconsistent with the bylaws and is inconsistent with the terms of and acceptance of the CCWG reports. If these interim rules are approved it will fundamentally compromise the effectiveness is of the IRP as an accountability mechanism within ICANN. I would like to propose that the CSG write to the board setting out its concerns about the inconsistency of this particular provision of the interim rules with the bylaws and with the commitments made that transition. I'd be happy to take any questions on this anyone has.

Kiran Malancharuvil: Greg's hand is up on this topic I believe.

Greg Shatan: Yes thank you. Greg Shatan for the record. I was also a participant or I'm also a participant in the IRP IOT. And I share Malcolm's concerns.

I would add to his excellent overview summary that the reason the IRP IOT final recommendation that went up to the board looks the way it does is not really because of decisions with within the IRP IOT but rather because of a final markup by ICANN legal which essentially as you can tell overrode the better judgment or at least the judgment of the IRP IOT as a whole concern, you know, ICANN wants proposed. They want their decisions after a very short period of time to be immune from challenge in the IRP. And this is essentially like, you know, submarine patents where you can hide something

long enough you have - you're immunized and can then do all kinds of dirty deeds.

I'm not saying ICANN wants to do duty deeds but what they want is basically to limit the reach of the IRP. And one of the essential jobs of the accountability Workstream 1 was to put some teeth done some sensibility into the IRP beyond what it was which was a based on a procedural challenge mechanism. So I think this is a way once now that the IRP is a way of actually challenging the substance of decisions they want to put their decisions beyond challenge as quickly as possible. And that's inappropriate and I would support this. Thank you.

Brian Winterfeldt: Thanks so much Greg. Any other questions or input? Oh, Dean please?

Dean Marks: This is just a question and thank you very much for that thorough but disturbing report. Is there any thought about potentially also getting the GAC involved and whether the GAC could get consensus advice on this issue? I'm a newbie so I don't know if that's possible where it would be harder for the board to ignore it. Thank you.

Goran Marby: I think the problem here is time. I mean the, even raising what is essentially a legal question with the GAC at any stage is a difficult thing to do so off - outside their scheduled agenda and within two days is not - I don't think practical within these two days. If this ends up being approved and we have to go through the process of potentially reconsideration requests maybe even in IRP challenge to the ERP rules and procedure, you know, if we get to that then may be. But, I - and I mean this is not a consent agenda. This is not for discussion. Most of the board members have not even any idea that this is even listed. I've spoken to a couple of them and was surprised to note who I have spoken to about this issue before and they were surprised to see that this was listed. So that's the level of awareness that we're dealing with here. And really what the effect of this letter would be to I propose that we write to Cherine and say raise these concerns so that he can say this looks like it's

controversial thing that it's not suitable for the consent agenda and they should be given further consideration.

Greg Shatan: Thank you so much. I agree.

Brian Winterfeldt: Okay Wolf-Ulrich?

Wolf-Ulrich Knoben: Yes Wolf-Ulrich Knoben speaking. Thank you very much and well it covers almost all – my question was also with regard to the process around the follow-up process. Now as it is on the - and is on the content agenda would it be possible to convince one of the board members close to us well to opposed to that point in the content agenda because then it's not usually from a procedural point of view it's not taken on the content agenda but it's taken to the main agenda for voting?

Goran Marby: I think we could certainly ask for example our - ACPH representatives on the board Matthew Shears and Avri Doria to make that. But in order to ask them to do that we can't to really expect them to do that off their own bat. If we write to Cherine and I propose, suggest that we copy our own representatives that would give them the material we wish to make that request. So I think the process for achieving that Wolf-Ulrich would be to write a letter such as I'm suggesting.

Brian Winterfeldt: Thank you. Steve DelBianco.

Steve DelBianco: Thanks. Just to weigh in to support Malcolm's view on this, the BC feels the exact same way. I would have supported this notion of starting the clock on their knowledge of the concern. And we believe it's worth raising the idea of changing the way the board considers its agenda this week. Thank you.

Brian Winterfeldt: Thank you. Any other comments or questions? We have one more agenda item on other areas of business and I would like to if we're done with that topic I'd like to move on actually back to Steve DelBianco.

Kiran Malancharuvil: Malcolm?

Malcolm Hutty: Sorry just...

Brian Winterfeldt: Oh.

Malcolm Hutty: ...Malcolm. Just to conclude that topic do we have agreement here what is the process for actually signing that? Do we have an agreement here to authorize offices to sign that on behalf of – a letter is that enough of that description on behalf of the CSG?

Brian Winterfeldt: I would suggest as a next step that you help put together a draft a letter for the CCSG time to consider and then hopefully that would be a next step would be...

Malcolm Hutty: Okay.

Brian Winterfeldt: ...would be a next step would be we...

Malcolm Hutty: ... in a draft letter. I will share it, circulate it with you...

Malcolm Hutty: ... get me afterwards.

Brian Winterfeldt: Yes there's a CSG private list that you can send it to.

Malcolm Hutty: I will send that.

Brian Winterfeldt: Or if you want to send it to me I'm happy to circulate it to ExCom, which ever you prefer.

Malcolm Hutty: Thank you.

Steve DelBianco: I've actually sent it to you Brian just a little while ago so you should have it.

Brian Winterfeldt: Great. Thank you. So take that up as a next item. Steve DelBianco?

Steve DelBianco: For which agenda item Brian? Fantastic. BC met this morning to try to articulate what our approach should be. We said some things at the microphone yesterday but our approach is really a three part with respect to the EPDP and the unified access model. We will continue to work hard. We believe our approach ought to be to continue to work on in the PDP to press for legal natural person distinction, to press for geographic distinctions. We know it's up against a significant barrier if it ever got to council but we think we should press for that. With respect to reasonable access we should press hard for a standardized form that they would all use. That's not unified by the way. That's just simply standardized and a timeline 36, 24 -- whatever the hours is by which a replying needs to come back. And if the reply isn't reeling in the data the reply would say here's why we are not going to give it to you until you do X or we're just not going to give it to you.

So that was one part. That's the PDP strategy. That's a rather modest outcome of the PDP. If you calculate out what it would take to get it approved at council.

The second part of the strategy is in parallel pursue this notion that ICANN could step up to the plate and be the sole controller taking all the risk requiring the registrars to respond to central RDAP queries because ICANN is stepping up to the responsibility of only having that query come from an accredited entity with a legitimate reason and would log those transactions in accordance with the audit requirements of the data protection board. That is what we went to the microphone to say yesterday, we support exploration of that. The contract parties support the exploration of it. But as I was just talking to Thomas Rickert that if the essential element there, the gating question is whether ICANN can be a sole controller just for the purpose of a unified access. In that case the registrar is simply a processor acting under

contract. It doesn't name even require a PDP if that can happen. And I believe it's worth exploring that but we have got to return to our roots at managing the PDP process because if we can't get that sole processor legal responsibility then all the work we have to do has to be slogging it through the PDP.

Now while we're doing that Brian the third leg of the stool is that with the next renewal of the temp spec would be an opportunity to ask the board to clarify three simple things about reasonable access to clarify that it ought to have a standardized form, a minimum number of hours or days to respond and a specific response. And in good faith we can pursue that.

I know that every time we talk about modifying the temp spec the contract parties go nuts on us. But if it's a transparent and we discuss the fact that it's only that parameters around reasonable access everybody can calm down and we ought to try to go in together to pursue that as a temporary spec modification at the next 90 days. So it's a three part strategy, the EPDP, the Unified Access Model as sole controller and potentially modifying the temp spec at the first instance to get a standardized way with a minimum response time. Thank you.

Brian Winterfeldt: Thank you. Anyone have any questions or comments on Steve's points on the EPDP? Diane?

Diane Plaut: Thank you Steve for that. That was really a thorough and very poignant analysis of what needs to happen. My question is coming back and you and I have spoken about this but to put on the record what you think is for step number two you said we need to determine how to get around or resolve the issue of making ICANN the sole controller and the contracted parties, the processor. And if you could break down steps that you think are necessary to be able to answer those questions and put forth a resolution.

Steve DelBianco: There is Article 4, 7 and 8, Article 24, 26, 28 and 29, the GDPR and the Article 29 working party opinions. And I'll send around a link to it. Brian King circulated the link and maybe Brian can send it around now where they lay out this scenario by which an entity is the sole controller and then hires a processor to process its payroll. And that processor process the payroll as a processor under contract and they are not controller. They're not a joint controller. So I'm trying to lay out that we can see – I'm not a lawyer, I'm an engineer and I can see on plain how it could work. But ICANN has to have bilateral private discussions with the data protection board to determine whether they can come up with scenario that it happens. And ICANN was unwilling to go do that with a lot of vigor until it had more of a community endorsement hence the purpose of yesterday's discussion at the microphone and the breakthrough of contract parties endorsement of that exploration. So that exploration is probably not going to happen by us in this room.

However for those of you that are lawyers and know GDPR really well please be creative and try to come up with a way to articulate that sole controller. Keep in mind though the sole controller only for the purpose of unified access to the nonpublic fields. They're joint controllers but the collection and then processing that you're looking at in the PDP that doesn't change. But for just the use of unified access could they be the sole controller?

Diane Plaut: My question is to you is I'm a lawyer and a privacy professional. I know all – I know what the law is. I know exactly what, you know, the framework is. And my question to you is more of a how to make this happen within ICANN. You know, you just said that we have this report now. It's shown through the letter of the contracted parties yesterday what was said that ICANN is ready to make the moves through the DPA. But the question is the fundamental process to bring it forward because that seems to be this stumbling block that Goran believes that he has to go and get DPA approval which is not reasonable to think that the DPAs are going to take the time and give the official authority to give it its blessing because that's not their role. The role is not to give individual entities blessings. Their role is to just give overall

oversights implementation questions. So the question is how do we take what we know who is legally right answer, now the support of the contracted parties to then actually make this happen?

Steve DelBianco: I'm not going to be able to answer that if I'm not the authority that you are. And yet I did see that there are codes of conduct that would be necessary to the implementation of the solution, codes of conduct according to the accreditation of those who are getting access. And codes of conduct do call for the Data Protection Board to give binding guidance on a code of conduct. It's in there. So they do react on the record if you give them the right package. So we need to understand what does the package need to look like and help ICANN to put that package together.

Diane Plaut: So from a procedural standpoint your viewpoint and your experience in ICANN is that if we get that procedural package together that we're going to be able to actually push this forward from a, I mean through ICANN. Like I'm just trying to see...

Steve DelBianco: It would be or...

Diane Plaut: ...like it's a roadblock of the actual steps that are going to make it happen.

Steve DelBianco: Fair point because having watched you for several months in the PDP we encounter nothing but roadblocks. This would not be a PDP process. This is not a policy question. It ICANN exercising its contractual authority with registrars to meet its by was driven mandates to comply with the law. So it's not a PDP process. It is truly this - what did Goran call it, a pilot – a technical study group, technical support group, technical study group. And that technical study group is both legal and technical right, the RDAP notions and the legal aspects. So that technical study group is where we need to put the best minds around this table to work, dive into this document and GDPR itself and articulate a way that ICANN can be sole controller. I know you can figure out a way. Putting that in writing and getting and into the technical study

group yesterday, do it right away and/or can act well in a top-down unilateral way because it is trying to pursue its obligation of exploring it. If it explores it truly enough the community's going to get involved in the accreditation aspects and how to manage the code of conduct and there will be a role for the community. But right now we are mostly just contributing individual insights on the technical legal study group.

Diane Plaut: Have one more comment to say that it seems to me that everybody is looking at this PDP, EDPD to be the road forward and the answer. And Goran just expressed that that we're waiting for this to happen. Now I have heard also him commit that he wants not just from the EDPD to have - to make policy recommendations but to also make legal recommendations.

And that I think is the hook is that this is the opportunity now. If this EDPD goes forward with just a glossy policy recommendation and doesn't give actual practical implementation and legal recommendations and provide a legal framework recommendations then it's not going to – we're not going to get through the temporary specs to a consensus that actually works into a functioning model. So I think we have to make the most of this opportunity. But this in this E DP and not just make policy recommendations but to make practical implementation recommendations.

Steve DelBianco: But you may not want to dialogue here but may I respond to that?

Brian Winterfeldt: We have two minutes left or we have four minutes left sorry. And we have two other people in the queue. So could I maybe take the other people's questions and then we'll see if there's time for you to circle back so we can hear from a couple other voices? Greg is first and then Anne.

Greg Shatan: Thanks, Greg Shatan and for the record. And well they DPAs will give advice on an industry code of conduct or binding corporate rules, what they won't do is tell a corporation or an industry how implement them. And that's really where outside counsel inside counsel comes in handy, rather this is critical.

And my concern is that ICANN isn't fit for purpose to actually, you know manage this. But to help make them fit for purpose we need to advise them because I think this goes back to the question I had for Goran who kind of deflected it that, you know, between getting you know cramped advice about interpreting GDPR and about how to implement it that they need help. And that part, that help won't come from the DPAs. It will have to come from us. Thanks.

Brian Winterfeldt: Thank you Greg. Anne?

Anne Aikman-Scalese: Anne Aikman-Scalese for the transcript. I think that, you know, Keith has - Drazek has gone to the mic several times to note that Uniform Access Model is the subject of Phase 2 of the EPDP work but actually - and so from the standpoint of the PDP we're not there yet. But I also agree with Steve DelBianco that a parallel track is appropriate for ICANN Org with the authority for the board to do so to go through the enforcement board in the EU and talk about, you know, if they are the sole controller from the standpoint of the RDAP and that protocol's adopted then this is a practical solution that helps Phase 2 of the EPDP. And it all has to kind of be managed intent and that ICANN Org can make significant progress towards community's demand for, you know, Unified Access Model by approaching it as Article 40, you know, if we can get accommodation from EU counsel or they can and that these things can operate in tandem while respecting the policy process and it'd be good for everybody.

Brian Winterfeldt: Great. Thank you so much. We have one minute Steve if you would like to make a statement.

Steve DelBianco: Yes. Keep in mind that unified access doesn't necessarily require policy at all. It's not policy, it's a contract enforcement. The PDP is necessary because even with UAM you still need reasonable access for people that don't have credentials. So whether we get to the annex or not is an open question. If the

PDP concludes we just need to put parameters around reasonable access and give all of this co-controller legal justification for the collection and processing. That is a major implement operational deliverable that PDPs do all the time at ICANN. It just takes a long time but it's a relatively modest deliverable in a PDP. And you don't have to get to the annex if ICANN is sole controller because it doesn't need policy to support that sole controller role.

Kiran Malancharuvil: Just of reminder if you haven't signed in there is a sign in sheet by Chantelle. She would like to make sure that we collect attendance here (unintelligible).

Brian Winterfeldt: Great. Thank you everyone. We are out of time for today. I appreciate everyone's presentation and we'll see you in our next meeting.

END