Transcription ICANN62 Panama
GNSO: Commercial Stakeholder Group (CSG) Open Meeting
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Wolf-Ulrich Knoben: Good afternoon. So we are almost complete, I think so, and we can start the meeting. Hello and welcome to Göran Marby, the ICANN CEO. This is the CSG open meeting at this time and my name is Wolf-Ulrich Knoben. I am the chair of CISPCP constituency. Let me start the meeting with some positive messages. I think it's good. Well, first, as a German, not as a chairman, I have to congratulate you and your country for having been advanced to the next level.

Göran Marby: Oh, I'm not happy at all. I'm so sorry.

Wolf-Ulrich Knoben: It's just, you know, for speculation. I would be very happy and satisfied, you know? Just in case you get more and more advanced. So the German team would have been the only one to have defeated the world champion, the potential world champion.

Göran Marby: So thank you to that.

Wolf-Ulrich Knoben: Okay. So that's…

Göran Marby: I will tell you that I think it's the only time anyone has done (a victory dance) down to the GAC meeting.

Wolf-Ulrich Knoben: Yes.

Göran Marby: But it did look a little bit strange of me.

Wolf-Ulrich Knoben: Okay. So the next positive thing is while Theresa is also here, I'd like to make you aware that this community, the CSG, is heavily engaged in the strategic initiative exercise, you know, done by MSSI. We had already a meeting together on this level. We'll have separate meetings on constituency level. I heard as well that today is the council is going to have a meeting on that. So that is a really good exercise and gives an impression that we take that really seriously and intercede as well to participate and also to contribute to that.

So far to the positive side and then let's go into the real drug, but before, if you like, Göran, if you have a specific remark to this community in the beginning, I could hand over to you but it's up to you.

Göran Marby: Has anyone heard me talk about GDPR this week?

Wolf-Ulrich Knoben: Not yet.

Göran Marby: Not yet. No, it's sort of comes, on the one hand, I would have had the same speech a number of times. But let me do a couple of remarks and maybe open for questions.

I think it's sort of - in terms of now talk about different houses when it comes to - and you know me, I always try to figure out a way to describe things, so nobody understands what I mean. But we sort of - we have a view on how this works which is hint one house. And some other people might be in another house and think about this with other assumption. So let me guide through the same way I did with the lawyer intellectual property.

The house I'm in - and because it gets easier if you accept the sort of underlying assumptions I'm doing. And then we can disagree on that but just to get there. So the underlying assumptions we have is that we figured out there's a law. Okay? It's been debated but we do have one.

But in that is that the law has some various specifics. One of them is that it's sort of made in asymmetric way. You collect data and you use data. You have a reason to collect the data and then you have a reason how you could use that data. So the first asymmetry is that the one who collects the WHOIS data are not the one who - ICANN, through its contract, tells someone else to collect WHOIS data. That's the first asymmetry. It's not a commercial interest to collect the data.

The second asymmetry is that the ones who use this data, ICANN.org has very limited uses of the data. So that creates the other asymmetry compared to the law because we don't have the data and that means that the risk finally ends up. We are a joint data controller. We have a risk. We have a liability into it. But all the independent contracted bodies have their own risk because they actually have the data. And that is the - a very important assumption about why we do things the way we do them.

The other assumption, which is equally important, is that - and you know this as well as I do but it's an important assumption to say that we also - if we don't know the legal context really, we don't - we can't enforce it. And we've seen that because in - we have created waivers before through the process we have that if we don't know the legal context, it's hard for us to enforce what's there. So if there is a law and we understand the law, we can work within that law; we can enforce. If we don't, we can't enforce.

We are not a regulator. We are voluntary system by contracts. This is also a very important assumption. And the last one is we don't have a database. We don't - the WHOIS database which technically belongs to 2500. We have an interface and access to that.

So this is the catch 22 in this situation. So we've done the first phase which I think - and I congratulate but again, I don't think you understand how more relieved I was. We're doing a six-month period really, eight-month period. We went from nothing into accepting a tier access model with temp spec on the side of it which we actually go to community to accept.

It wasn't always nice. It wasn't always the best. But we also got legal guidance from the DPS to be able to do that. Fantastic process. We are far ahead from many others when it comes to this.

The problem now is that we're talking about who's going to get access to it. And it's not really - we can have literally different discussions about this but we can't see a simple legal assumption about - to turn the individual responsibility for the contracted parties who has the data or about to be put that over to Unified Access Model because the specific about individual responsibility and what the Unified Access Model actually is, is a toolset for getting access to it. It will work for all contracted parties, so they don't make the decision on an individual basis. So we're actually talking about creating a source of a legal scale on top of the contracted parties and we will move that risk somewhere else. So that's the sort of mechanism.

So with that, we thought it was a great idea to pursue what we're now doing. And that is to find - to try find more legal guidance. There's a difference with what we did before, what we're going to do now, is because as a joint data controller, I went up and said that I am legal responsible. I have to make a decision. That's what you saw in the temp spec.

This time, I don't have the data. So therefore, I can't go out and say what I'm going to do in that sense because I'm actually not responsible in that sense of how someone delivers out the data. Therefore, we're also entering very closely now to find as much legal certainty as possible, going through the same process we did before. And that is why coming up with a proposal

which is really meant to ask questions through the DPAs because they always ask us to come up with that and sending them over to the DPAs -- and again, I always invite you to participate in that and I think I've been true to my word -- that the questions you sent to us in the Calzone Model we also present to the DPAs.

And then we will get it back and hopefully we will get legal guidance on the other side. But I have to admit, I think it's tougher this time. I think that the first time was easier. And I, you know, we are one of the few actually who got legal guidance from data protection authorities in Europe. There's so many who wanted this and we actually got it. And I think it's very much depending on the multistakeholder model in ICANN as an institution.

So we - if you actually look on the paper we brought forward, you could see it's inconsistent because we actually put questions which are contradictory to each other in the paper. And that is on purpose. We did that with the Calzone Model as well because we want the DPAs to come back and answer some of those.

And we really need your input to provide us with questions we can ask for the underlying assumption that we think there is a possible way to create a Unified Access Model.

So the next question, what happens to it? There are three alternatives in this. First, of course, we get good legal guidance which we can use in turn in a multistakeholder model and the policies, depending on how it looks like, and that can be used. We now know how to construct the Unified Access Model with different accreditation models below. That is, of course, the scenario I'm working as much as I can to get.

The second scenario is, of course, which I tend to believe it's smaller but still the same though, according to GDPR, you can't have a Unified Access

Model. These will be individual decisions by the contracted parties going forward.

And the third alternative is don't get anything.

All of those three scenarios we have to think about what to do to stand up. Last time when we got advice, we also said we're actually going to go to court. I'm not saying that we are going to test the law more in court. We're already in court to test the collection of data. But if we don't get advice, we probably need to figure out together, otherwise, to create legal certainty.

So that's the house I'm building. I can't say I have a roof right now. But that's where we're going. So maybe I should know if any question - I open the floor for questions.

Wolf-Ulrich Knoben: Sure, thanks very much. And surprisingly, how did you know that we would like to talk about that, you know, because…

((Crosstalk))

Göran Marby: …I'm actually reading…

Wolf-Ulrich Knoben: You can read. Okay. Thank you. Thank you.

So, well, I think it covers a lot of that. And people in the different - while they make up their mind, I would like to hand over maybe just to Brian, yes, for specific question here.

Brian Winterfeldt: Great. Thank you so much. And thank you, Göran, again for joining us today. We really appreciate it.

First of all, I just like to say the IPC obviously welcomes the Uniform Access Model framework in discussion that you've rolled out and we very much look

forward to responding to the questions that you put forward and we do hope to participate. We also hope to see that as an opportunity to push forward the community work that the BC and the IPC has started with regard to Accreditation Access Model. We're going to be working on adding key features to it, including input from the cybersecurity community here at ICANN, and also looking at, again, using the framework of questions that you put forward to track the work that we've done to the outline that you've put forward in the Unified Access Model. So we're hoping that will help the org and ultimately the community in looking at next steps while we're continuing these discussions.

I guess one of the questions that I continue to have and I'm hoping you could help me that maybe we are thinking about it or there's a possibility to think about this in a different way. From our perspective in the IPC, GDPR compliance doesn't just include the considerations around display of data but we read GDPR to also account for access to the data as well. And so in our mind, the full compliance model does encompass both the display issues as well as the access issues.

So I'm not sure that we 100% agree -- or at least I should say me personally 100% agree -- with the idea that there needs to be a different approach taken for the access portion. I definitely hear the interpretation as you stated it. I'm just not sure that 100% I agree because, again, you know, putting a framework around the compliance for access, to me, is not necessarily legally different than some of the decisions that were made in the original temp spec. I understand that those decisions were made in consultation in part with the DPAs with the community ultimately drafted by the org and to have a Unified Access Model, I guess I'm not 100% in agreement that we necessarily need a different kind of blessing or a higher level than what we saw in the first temp spec. And I don't know if you have any thoughts about that.

Göran Marby: We're all in a place where we're trying to figure out new law. There's no opinion that is bad or good. In conversations with the DPAs, they have

pointed out that they think that this is a different thing from the - from containing the data. They also said that they are looking forward to cooperation where we come together and present a more detailed model. Remember that we actually came up with this in - already we've released the Calzone Model. That's where we started talking about it.

We called it then Accreditation Model but got corrected. And therefore, we changed it into Unified Access because, again, it could be different accreditation models under an umbrella.

In a way, it's also the voluntary system in ICANN that is sort of - I wouldn't say complicated but it makes it more interesting and that is the - that we are not the regulator and have very big problems enforcing something and if it's not in the context of the law. We are looking forward to your legal arguments about that, as we always do. But I also think it's important. We are in a situation where we actually need to understand and even that basis that you're saying that we don't need it. In some sort, it has to be tested by someone. So we sort of - it doesn't matter if you sort of go down that road or any other road.

In conversations with member states in Europe, we have discussed different alternatives. There is something called the NIS Directive in Europe which is about critical infrastructure. Member states have the ability to say that something is critical infrastructure. They're actually in the process of doing that right now.

We don't know what would happen if a member state actually declared that the domain name system is a critical infrastructure. What happens if 28 does it? Some companies in Europe, as you know, has their own CCs. Most of the CCs in Europe are under some sort of law. And some of them have mandated-free law which is the public interest part that only have to have it opened. Of course, we ask those questions to DPAs as well.

Other alternatives are - I mean, the cybersecurity structure in Europe, the commission of state that the WHOIS system is important, that does have a legal certainty effect over.

What else? There are something else that I'm talking about. There's a third one as well we talked about when it comes to legal possibilities. I'm tired.

So we talked about NIS Directive. There's one more. Yes, I will come back - I will remember the minute I come back.

Wolf-Ulrich Knoben: Okay, thank you. Brian, you would like a follow-up question? Yes. Please state your name.

Brian Winterfeldt: Sure, Brian Winterfeldt for the record. Thank you, Göran. I think that's helpful. And we hear that, you know, these discussions are going to take place and you've already acknowledged that there are different alternatives of feedback that we might get, including a blessing, no blessing and we'll have to decide how to move forward. You remembered your point? Do you want to make it quickly?

Göran Marby: (Unintelligible)?

Brian Winterfeldt: I did see that. Yes.

Göran Marby: I'm Swedish. I'm not supposed to have a body language. Except when I do victory dances.

In GDPR, it's not exactly the same thing but it's actually close enough. And one of the things that we pointed out is the member states have the ability on individual basis to assign accreditation houses. The DPAs have done the guidance that I've been talking about that. And the philosophical question is, of course, what would happen if a member state accredited ICANN as an

accreditation house for the WHOIS system? What happened if 28 does it? So we raised those questions as well.

So yes, it might be so that you're right that the law doesn't even - we don't even have to ask the question. That could be debated. We can debate it. We can have many lawyers debate to that. But at the end of that, we have to test that legally of some sort really because there's no - we don't have the enforcement if the law is not recognized. The temp spec really took what we got the guidance from the DPA. So we implemented and we're enforcing it to the contracted parties to the extent we actually went to court.

We need to create some sort of situation for Unified Access Model. But it could be so. It's not - it could be different varieties of other laws that makes that possible to happen. That is what I'm trying to say.

Brian Winterfeldt: Great. Thank you. I appreciate that additional point.

Following up on those statements, I'm wondering, you know, the work that we've done on accreditation and access to date that was stimulated by the IPC and BC but that it's been welcomed and open to the entire ICANN community and indeed supported by ICANN staff. We feel like the work that's been done will help actually put meat on the bones, so to speak, for the Unified Access Model outline. And so our assumption is that we want to push forward that work while we're soliciting feedback from the DPAs and I'm wondering if you have suggestions on how we can continue to push the work forward as a community and assist with flushing out the outline that you've released beyond answering the survey that you've put out that, of course, we are looking forward to responding to.

Göran Marby: I said when we started that I always think it's positive when the community comes together. It seems like (unintelligible) now to get several different models. And then as the ICANN CEO, of course, I have to take the different scenarios into account. To be honest, I pleaded this before and I know I do it

in ways that you think I'm silly but the thing that we don't have is the overarching policy that balance the right to privacy and the need for information. We don't have that policy. It will actually be great if we have that because that could be a way of looking at what we're doing from an overarching - it sort of have a benchmark. I think - people tell me "Oh, we've been debating that for 20 years." Actually, I happen to think that - I believe that the ICANN community can do that. It will not be easy. "You've been close before," people have told me. And then something fell. But under this, we actually have a need to it. That would simplify things.

Coming back to your question, we will continue to support any effort when it comes to giving us - giving questions that we can send to the DPAs. We will see different models. But I will not and I cannot -- of course not -- take sides in those discussions. And it's not my role.

Theresa?

Theresa Swineheart: Yes. If I could just add, as you may be aware, we did provide a table that shows the different discussions that are occurring across also the one from there and then what's referred to as the silly specialist. So there's several discussions going on in different places. But if I could encourage also as dialogs are happening to please submit that to the gdpr@icann.org. It allows it to be posted, shared widely, obviously, when people come to look but it also enables us to try to capture it in any sort of reiteration to the new tables. So thank you. I just wanted to add that.

Brian Winterfeldt: Thank you, Theresa. Just a quick follow-up on that, we'd like to note that we think there are some portions of the chart that were put together that may not have accurately captured some of the work on the Access and Accreditation Model. So we will make sure to provide you that feedback. So hopefully the chart can be updated. But thank you for the effort and we appreciate that the org took the time to acknowledge the work that gone into that for the past, I think, six months or so. So thank you for that.

I think Marc Trachtenberg?

Marc Trachtenberg: What was your project name again? I can't remember it.

Brian Winterfeldt: Access and Accreditation Model.

Marc Trachtenberg: No, we had an Italian name.

Kiran Malancharuvil: Yes. Oh.

((Crosstalk))

Kiran Malancharuvil: It was like cannoli.

Göran Marby: Yes. Yes. I always talk doing things like that. That's silly.

Wolf-Ulrich Knoben: Thanks very much. Well, on behalf of (ISPs) we have a role here and in lining up questions. The next one would be the BC and then Marc.

Claudia Selli: So thank you very much, Göran, for your remarks and also you might recall that maybe here in Puerto Rico renamed our constituency from "Business Constituency" to being "Cooperative." So I just wanted to see with you if we can help and offer some help and I was wondering because you state, you know, that we - you accept questions, of course, to be submitted to a different DPA but I wanted to see whether we can now further in the Brussels outreach and maybe join some of the meetings either with your person that is doing the outreach in Brussels and then help in that in echoing the points that you might have.

Göran Marby: One thing we realized in this is that we needed to have more people in Brussels. So we hired one more who - (Helena), who comes from the

European Commission, and most people have been engaging in IT work with European framework or the - knows her.

And we have now - I think it's very - I mean, most of you - many of you have policy offices in Europe and usually in Brussels and I think it's very important to continue the conversations.

But we also have to be transparent in what we do. I mean, we always - we can't take sides from discussion. We should not and will not do that. So we will be open about the questions. We will - as truthfully as we can, we will try to provide the questions to the DPAs.

It is - I mean, this is going to be harder. I mean, we - because it's really - the only thing I think we can - you know, if we're going to get guidance is really about the multistakeholder model that we, as a community, actually work together to come up with much joint position as possible because it strengthens what I can say. The less delusion I have, the better the result, especially in a situation like this when we are sort of - regardless of how we see it or actually looking how to use a new law for access.

When it's - so, you know, we will be there. We are thinking of having more regular interactions with leadership, coming with more updates on the telephone maybe once a month to ask questions. We can keep this going to help to support the policy work in the GNSO because there're also other moving parts in this. There are other views. There are many things that happen around the GDPR. So we are looking into that.

So again, you know, we want to cooperate. The only thing there is I don't take sides.

Claudia Selli: Yes. Yes, just one follow-up. And I totally understand that you cannot take sides in this discussion. I was also wondering whether doing this in corporation not taking part to the meeting but, for example, being able to go

either before your outreach or after the outreach in coordination could be helpful in reiterating some of the messages.

Göran Marby: We're always open to figure out new ways of transferring your views into the DPAs or anyone else. I think that what we're looking into now is sort of free parts. We have the member states. We have the European Commission, especially Justice who wrote the law in the first place. We have been inviting them to come here many, many times. And then you have the data protection authorities. And we need to - you know, we are - we have done actually something quite incredible and then we're at the top our game anymore. And we need - I'm open to figure out new ways of doing it.

The only thing I know is sort of logistically hard to set up a meeting with the data protection authorities that has representatives for all parties within the ICANN community. I think it was very interesting, at least for them, but it's also very hard to do that. So the way we have done it so far is that we've been trying to be as transparent as we can and the questions are always answered.

And it has been - the transparency is important but it's also quite hard to have the level of transparency we have because it means that the DPAs have to be very, very careful on what they say to us during a meeting. It's hard for them to sort of speculate in a meeting because when they know that we're going to write it down and send it out to you and we have -- not from the DPAs but from others -- sometimes received complaints about our transparency to the point where member of the European Commission actually openly stated, "How can you pose this? You can be sued by saying this." And we said, "You know, that's ICANN. We have to. We actually have to be that level of transparency because it's not about mind trust. It's not about you trusting me, which may go up and down, but it's really about - so in the end, we also have a contractual relationship with the contracted parties and when we can provide that legal certainty, so they can accept it as well or

we can accept it for the guidance like we did with the temp spec. Things move. Until then, it's harder.

Wolf-Ulrich Knoben: Okay, thanks. Thanks, Göran. Well, I have to take care of all the agenda here. So let me just look around, you know, who is going to put a question on - so Marc and - you, any further question to Göran?

Brian Winterfeldt: I have one.

Wolf-Ulrich Knoben: And Brian as well and - well, Marc at first. Yes. Marc Trachtenberg, please.

Marc Trachtenberg: Marc Trachtenberg for the record. Göran, you've made some similar comments on Monday about how ICANN does not have the data and so ICANN cannot provide it. I suggest that you could have the data because ICANN is a processor and a contracted - I'm sorry, ICANN is controller and the contracted parties are your processors and you could simply require them to give you the data and you said you would not be willing to do that but if the community decided that ICANN should provide access to nonpublic WHOIS data that you would build a database and you would do it.

But there are some things that we might not like about that. I can't see anything that we wouldn't like about it and I was hoping that you can elaborate on what these things that we might not like are.

Göran Marby: No, I think that the wording I used was that "it might not solve the problem" very particularly.

Marc Trachtenberg: Yes.

Göran Marby: First of understanding is that that if the community came together and have policy that we think is essential WHOIS database, I'm not going to say no - I can't say no because the policies come from the community. But the second

thing is really about - and everything is theory. I'm not saying that that's - I said it might not solve the problem because we're actually talking about now what transportation of data in the sense again that so someone buys a domain name. That triggers something. And if you compare this to credit cards, for instance, and you are lawyers and you know this much better than I do, but apparently then that that actually starts and triggers the (unintelligible) section of, say, the data. So, you know, we have not been able to. We have not looked into it 100%, I would admit that. But we know that our questions about who is actually then the data controller, who's responsible for the data because now we're talking about transport of data.

Also looking into the next - when we get out of this, we also have to start a conversation on how to handle ePrivacy legislation. We're not saying good or bad but that would also probably have an effect on our possibility because they are now working in line.

So, if the community services, or you could do that, you can look into the legal problems or opportunities when it comes to the central database.

The way we went around it is that I did the - and I'm forgetting it. Walt Disney, was that (Ferdinand)? Do you remember the guy who tried to kill (Ferdinand) or - when he sat down in the ring and it opened and he's like "Kill me"? We actually went to the European Commission officially and asked for the ability to be legally responsible for the data within the contracted parties. And so far, we haven't been able to figure out a legal way to do that because the law is so specific.

And that is sort of the nontechnical way of trying to solve the problem but making ICANN.org, not ICANN the institution but ICANN.org, legally responsible for it. It's uncharted territory. So the wording was I will, of course, do it if there's a policy from the community but it may not solve the problems you're after.

Wolf-Ulrich Knoben: Thanks very much, Göran. I have in the queue Anne, Brian and - you also would like but I have to close the queue right now. It's the very last opportunity.

Göran Marby: I can give you…

Wolf-Ulrich Knoben: And…

Brian Winterfeldt: …if you want me, I can stay on a little bit longer.

Wolf-Ulrich Knoben: Yes, I - if that is in the mind and also from the community because we have a condensed agenda but I would like though. If - I'm flexible myself. So if you like to have Göran longer here, okay? No objection, thank you. Good.

Anne Aikman-Scalese: Anne Aikman-Scalese, IPC. Thank you for being here and I know that you're often between a rock and a hard place and we do appreciate what's been issued in terms of initiative taken by the board.

This is a question relating to ICANN's use of registrant data because I kind of keep hearing "Well, we don't use it" but the question is about strings that have eligibility requirements where there are public interest commitments that have been made. And so in the event that, for example, a complaint is filed with ICANN related to the violation of a public interest commitment with respect to a string that requires credentials for eligibility and then Compliance has said, I think, correct me if I'm wrong, that they look into violations of eligibility requirements, violations of public interest commitments, how could ICANN do this without using registrant data?

Göran Marby: We have in the temp spec the ability to go in and ask questions. What I said that we have a limited usage of the data, it's compared to you guys or anyone else. We use it for very specific reasons. And this is one of the technical problems with this. The DPAs, in a conversation with us, sent a letter saying that ICANN.org can use it for its own purpose. And they actually didn't even

read the mission. They actually wrote, taken from the Incorporation Act in California what we supposed to do which is a very limiting way of how this data is used.

So when I say that is to point out that the - most of the use in certain ways, the most queers of the use is coming from you, coming from anyone - I mean, down to private person who wants to go in and check if this is a fake news page or not. So that is the sort of the difference I'm making in this. And I based this assumption on the user cases that we asked for - I think it was in August last year or something, which you helped us with, because if you look on the aspect of all those different usage bases, our usage is very little. So that's the concept I'm setting around it.

And as a side note, you are aware that we are running something we call the DAAR Project. It used to be called the (DART) Project but an IPC lawyer told us we couldn't. So we call it the DAAR. The DAAR Project is about that we try to figure out mechanical ways using databases from different areas to go after bad - what we call bad domainers. The domainer who has many - who seems to put into place to sell bad domains with spams and other things. And that's a project that we've been building and we're testing it legally and we're testing, so we can actually - and I think that we should have come up for the first report about this a couple of months ago but everything gets delayed.

That project we have to rethink slightly because we're getting access to the same data as you. We're actually getting the data from the same place as you do. And now, we have to figure out if we can change it slightly, so we get that, so we can still have the same data without going under. This is - often when I speak to police, they sort of think that we have somewhere the database that we can go and use. But we're actually collecting the data from the same sources that you do.

Wolf-Ulrich Knoben: Thanks so much, Göran. So we have Brian first.

Brian Winterfeldt: Brian Winterfeldt, IPC. Quick question around next steps. I know that we have discussed already today seeking guidance from the DPAs around having a Unified Access Model for data. The question that I have is, in the past, we talked about having potentially a separate temp spec on access and accreditation. I know you've noted that there could be a couple of different results that could come out of seeking guidance from the DPAs and you said at that point we'll have to see what they come back with and what to do. But I wanted to know about the possibility of having a separate temp spec if that's still on the table for an access and accreditation model. Of course, depending potentially on what comes back from the DPAs.

I would note that the contracted parties have very vocally stated in multiple forum this week that they don't see that as something would be allowed and they've done your probably favorite thing and threatened litigation around that.

Göran Marby: Nobody threatened that.

Brian Winterfeldt: (GNSO) council table today.

Göran Marby: Oh, okay.

Brian Winterfeldt: Yes we did.

Woman: We did.

((Crosstalk))

Woman: Yes.

Göran Marby: Collectively or one?

Woman: One.

Göran Marby: Yes.

((Crosstalk))

Göran Marby: I'm going to be very straightforward with my answer because I get accused I don't answer. I don't have a clue.

There are too many different ways on what can happen from now on. If we get it right, if we don't get it right, we can adjust. We get to know the timing of that one, how the GNSO is going to decide if they're going to have one PDP or two PDPs, I don't have the answer to that. We are very much in the same phase we were in Johannesburg a year ago when we actually further started talking about the process and I got the same questions very much in the beginning of this process and then we sort of every month, every - we sort of narrow it down. The first thing we went out, I think, was when we said, "We have now legal counsel. We think we have joint control, and therefore, we're going to do this." We are actually exactly in the beginning.

I think we learned something about the process. So we can do things faster. But I don't know the answer to that one. And that's the difference from when we - because becoming a joint data controller meant that I have the legal responsibility to make a decision in the end and that turned out to the temp spec.

I think that we have to engage with, you know, in the community how to take the next step. And also pointing out that on the other side of this, if we are now lucky to get guidance and we all agree to some set of form, we have to build something. And certainly my inner Xavier Calvez, we also have to find this which is also a discussion that needs to be done somewhere along the line as well.

So my official answer is I don't have the answer to that.

Wolf-Ulrich Knoben: Okay. Thanks, Göran. So next is Greg Shatan. Please state your name.

Gregory Shatan: Hi. Greg Shatan from the IPC for the record. Thanks for coming, Göran.

A comment and a question. The first is, if the DPAs relied solely on the articles of incorporation to understand ICANN's mission, that's quite unfortunate and I think that ICANN needs to do a, I would say, a better job or a good job of pointing them instead to the updated bylaws where the community spent an awful lot of blood, sweat and tears discussing the mission and core values of the organization. I think that provides a much more up to date and wholesome view of what it is that we do. So I think any attempt to shed light and lead the DPAs out of their limited view of ICANN would be much appreciated. I know it's tough…

Göran Marby: I can comment about this. That was in a big - you read this because it comes as news to you because that is in the official documentation. I have to take a step back and say that the fact that we actually got guidance when - I'm so grateful for the DPAs. You can read every day in newspapers about other organizations who's trying to seek guidance from the data protection authorities. And we are more or less one of the few exclusive groups who got a legal guidance.

We did a lot of hard work. Most of you didn't believe we're going to get it at all. And we used to work in the same environment. That's hard. Yes, not everything - and I also know because I said when - we got this. I know that not everybody is going to be happy about it. Actually I knew that no one will be happy about it despite which side of the fence you are.

But during this process and I'm not - I'm sort of saying that, we received a letter from the data protection authorities that actually after that the board acknowledged which starts with they think WHOIS is important. And if you

remember the conversations when they sent the first letters to us in 2003 that during six months we did a culture change in our relationship with the data protection authorities, so they now recognized the importance of WHOIS. And the board recognized - running up the temp spec to the importance of it and yes, there are no bylaws.

So we might have said that we tried the best we can and we have to proceed going forward. But I agree, the mission of ICANN is the most important thing. And that has been stated numerous amount of times from the board, from me and also from you in your relationship with the data protection authorities and other ones.

Gregory Shatan: Thanks, Göran. And I do want to acknowledge, I think, the herculean efforts of ICANN staff and advisors in approaching the DPAs and the kind of shifted mindset on their side as well as yours. I think it's, you know, been immensely helpful just in conducting an analysis of some sort that they do the mission kind of at the root of the analysis and everything kind of flows from there. So narrow mission, you know, end up with a narrow analysis. But this is a continuing process.

Anyway, that wasn't why I put my hand up for but when I heard that, I felt I needed to make that point.

Question and it's a - is whether ICANN would consider - and I think this will be easy enough to do technically maybe through a hand-off between two Web sites. Whether ICANN would consider collecting the WHOIS information directly.

Göran Marby: It goes back to the same question as - if the ICANN community wants the underlying model for the WHOIS system, you tell me what to do. I'm bounded by the policy set by the community. And it's - I heard about this several times this week. So I, you know, it's up to the community to come up with that solution.

But that I will also say what I, you know, it might not solve the problems that you think you solved with it because the way the GDPR and other privacy laws are constructed, also including the data share. You are lawyers. Don't get me into this now. I'm not going to have a legal debate about this.

Gregory Shatan: I wasn't going to. All I wanted to say is that underlying all of this is the fact that we have to comply with GDPR and I don't deny that I'm not looking for anything fancy way around it but rather once we do it, it's just one way to eliminate some of the parties, especially the, you know, the contracted parties from feeling, you know, quite as under the gun as they are now because they have been kind of thrust into the middle of this collection situation through an accident of history and, you know, here we are. But I'm not going to argue with that where there's some magic way out of the GDPR. You know, legal compliance is what I do for a living. That's why none of my clients are in jail.

Göran Marby: Funny enough.

Gregory Shatan: Yes.

Göran Marby: That's what I told J.J. His job is to keep me out of jail. He's been successful for 2-1/2 years.

Wolf-Ulrich Knoben: Thanks, Göran, for that. And the last question is from Susan. Please.

Susan Kawaguchi: Thank you. I was just curious to know your thoughts on how the - your compliance team can fulfill their responsibilities without the full WHOIS record. And then I have one other comment after.

Göran Marby: I'm not - I have to admit I'm, right now, not the expert to answer questions about how we deal with compliance but I will be very happy to take that question back because I know that however I answer that, it has to be dead right.

No. No. It's, you know. It is important that questions like that get a correct answer. If it's okay, I will ask Jamie) to write and get back to you.

Susan Kawaguchi: And can I follow up?

Göran Marby: Yes.

Susan Kawaguchi: So in just some, you know, anecdotal evidence, I used the lookup - WHOIS lookup on ICANN, ICANN.org Web site, and that centralized lookup came out of the review team - WHOIS Review Team 1 to solve an issue of trying to - of being so scattered and fragmented, you know, being - availability of WHOIS.

In the last two weeks, I have been oftentimes timed out on that and the message - the error message that I've been getting is that the registrar or registry has timed out the access. So, you know, I don't know if - and I'm sure you're not in the weeds on this but if that might be a question for Jamie), too, is, are you finding your own access, just the redacted data, is timed out because that was a critical recommendation from the WHOIS - first WHOIS Review Team and I - and even though we're only getting redacted data through that, I would like to see that to continue to work.

Göran Marby: Thank you. We'll come back to it. And I'm sorry that I don't have the detailed answers to your questions. I also am very happy that you actually find something on ICANN.org. That's accomplishment by itself, I would say. I probably shouldn't have said that but I said it anyway.

Could I be personal for 2 minutes before I leave? Can I have 2 minutes?

I know that, you know, a part of your job is always to scrutinize what I do and then come up with reasons why I'm doing it and that's okay. I don't have any problem with that. I sometimes say my dream was to be the villain in the

James Bond movie. I didn't succeed in that but I became ICANN CEO and I think that's a good second.

We are trying, with my team and myself, to be as transparent and open as possible. And we're having (unintelligible) and we will make mistakes. We will do things that you don't like. I will say things the wrong way or will deal things the wrong way. Please talk to us. Please ask us questions. We will continue the dialog. We have - we are trying to build another house, connecting that to the first house we built with the temporary spec. And we do that for no other reasons because we actually believe that we should have access to the WHOIS system under the light of GDPR. We try to figure out, together with the community and all your knowledge, how to make that happen.

And that is the - that's why we're spending all this time. That's why we're spending so many much money which - for legal - actually going to legal cases in Germany. That's why we're doing this because we have a fundamental belief that we want to have as much access to the WHOIS system as possible under the light - under the circumstances with GDPR. We don't know exactly where we're going to end up in that because that is what is in the mission, what's in the bylaws.

Please let us work together. If I do anything wrong, I will try to correct myself. If my team does anything wrong, it's actually my fault. I invite you, as I invite all other parties, we're trying to do something that no one has done before -- to adopt the WHOIS system under European law. And we - the stronger we can be in the ICANN community and the ICANN as an institution, the better the case that happens because the only reason we are on the table to talk to each other, to talk to the DPAs, to talk to the member states, to talk to the countries in the GAC is because ICANN is a very strong and very, very good institution that have been handling those sorts of things for 20 years.

So let's continue to have an opening environment. And you know me now. I don't have problems with frank discussions. I don't have problems with disagreement. We're trying to push things forward. Please let me know when I'm totally wrong, as you usually do. But let's continue the discussion together. But also make sure that we have this discussion with the rest of the community. We need to do this because on the other side of this, we have to learn how to work with policymaking processes under - when it comes into laws. The GDPR in Europe is one. There's going to be many more around the world. They got to be different. If we can come up with the balance in between right in privacy, we have a case to go into all of those jurisdictions and talk, I believe. There's going to be other laws, the ePrivacy laws, the eEvidence laws and all the other e-laws that comes around, the discussions about the domain name system and the Internet right now happens all over the world.

I took this job because I happen to think ICANN is not the Internet but we are an important function of it. And the thing that's really important for me happens to be the same as I know the multistakeholder model itself. We can use that as strength. And I think we showed that to you in the process for Calzone up to the temp spec. We really didn't like the process. But we actually got there in the end. So thank you very much. I'm looking forward to work with you.

Wolf-Ulrich Knoben: Thanks very much, Göran. As usual, really the CSG - we take that seriously, the dialog with you and about being open and we thank you also for your openness here.

So in particular, well, we also like the - your behavior about having bilateral calls maybe during the meetings where we can update each other about the issues - the various issues we have face to face.

So thank you very much for that for the openness. Thank you for your time here you spent. Thank you very much so far. And we are going to move in our agenda. Thank you.

Göran Marby: Thank you.

Wolf-Ulrich Knoben: Thank you. Thanks.

So, thanks. We do have another guest later on in - maybe in 10 to 15 minutes. Xavier Calvez is going to meet us and then we are going to talk about the auction proceeds.

So we are a little bit behind. These will have, let me say, 10 to 15 minutes for the interim purposes to produce cash and then step in to the customers with Xavier Calvez. So I have allocated around 20 to 25 minutes with Xavier Calvez. Maybe we will end this in 15 minutes but I - at the time being, I don't think it's a big problem.

Having said that, we have found the agenda for internal points. And I wonder how we go through that and whether they take a lot of time. We are going to talk about the EPDP formation, if that is necessary in that round. So, you know, the agenda was established weeks ago. And while it was adopted in between but the ongoing discussions here during the meeting also in the stage where we are aligned with and have seen just in the meeting before with the GNSO Council that the - no, it's the charter. The charter is going to be formed for the EPDP team that the charter is out for internal discussion and that's what I would like to encourage you as well and I'm sure you're going to do that on the - in constituencies, in the various constituencies to discuss that charter and, well, in order to represent your interest in that.

One of the points which is, I would say, crucial to ask is the formation of the team itself and the composition of the team. There are variants of suggestions in the charter saying, on the one hand, it should be three

members from - per stakeholder group which was yesterday the case. Today, I was reading it could be three per constituency. That was the reason why I was asking that how solid is the charter in this respect. I think we should make up our mind in various constituency's meetings as well with regard to that and then think about how we can cover that.

Is there any comment to that? Is there any requirement to this process right now? But at first Marie and then you, Paul. Yes.

Marie Pattullo: Thanks, Wolf. Just a bit of clarity for you but Paul will correct me if I'm wrong.

Wolf-Ulrich Knoben: Sorry, the mic is…

Marie Pattullo: Is that me?

Wolf-Ulrich Knoben: And please state your name when you start…

Marie Pattullo: Right. Okay. Marie Pattullo from the BC.

What we have thought about in council, yes, we've gone back and forth the numbers. But one thing that we were - Paul, I'm looking at, because we were specific about this, is the original draft would not have worked for the CSG because there would have been one member per constituency and two alternates within the entire CSG. Now for us, that simply couldn't happen, of course. We need at least one on one. So we needed at least three members and three alternates.

Keith has gone back and forth and amended it quite a lot. The last iteration, which is the one that's in the current Google Doc, was a surprise to us when we saw it as well because it's given each constituency here three members; for the CSG, nine members; with the other SGs have three members. So I'm not sure that it's set in stone. But what I can tell you from our perspective is

we will ensure that we have parity and separate parity for the three constituencies here in CSG.

Paul, did you want to add to that?

Wolf-Ulrich Knoben: Paul, please.

Paul McGrady: Thank you. Paul McGrady for the record.

So, yes, Keith Drazek sent around a new revised version of this document about an hour ago. And because we had some math issues with it earlier in our conversation as a council, I will admit that this new version is even more confusing to me. And so we do have to go back and sort it out. But the bottom line is I think that we had a minor victory here because the initial theory was that it would be by stakeholder group. We've got it down at the C-level which means that essentially everybody will have a seat between one and three, we're not sure, at the table. The balancing of that has been very exciting. It's been kicked around included - including weighted voting for those with fewer seats or I think what this latest draft is meant to do is to balance up the number of seats. I am not allowed to say voting but - that that was one of the ideas that were kicked around.

We don't like the idea of weighted voting because we don't like the idea of voting. That's not what ICANN is about. And so we are trying to tweak the math here. But the important part is, the victory of the day on this is, that it looks like we're moving towards representation for everybody, everybody who have a chance to have a voice. So that's the key.

So details to follow but I think we are turning in the right direction on this. Thank you.

Wolf-Ulrich Knoben: Thanks very much, Paul. Mike, Tony, another one - oh, two or one of you? Okay, one of you. Thanks. So Mike it is.

Michael Graham: Okay, thank you. Michael Graham for the record.

Paul, just for clarification and I agree with your concern with the - even the use of the term "voting." But is that signaling that there's anticipation that it will not be a consensus coming out of that PDP?

Paul McGrady: No, so Paul McGrady again for the record. So the short answer to that is no. I don't think that that there is a sense that there won't be a consensus coming out of this. I think every - essentially everybody has a clock ticking, right? We have whatever we got in temporary specification for access to WHOIS. That goes away when the temporary specification dies, right? We don't - it doesn't revert to how things used to be as far as I can tell. And they have other issues that they need out of this. And so everybody has something that they need.

The group size is nimble. We're putting forward it I think a good - we're going to work on a good budget to give to the board. I mean, they've already expressed this week that they're taking the budget needs seriously, including face to face and things like that. So I would say that the morale, the esprit de corps, is very positive and I do think that people are going into this with a good attitude that we are going to get across the finish line at the end of the day, at the end of this PDP. I don't think it's being set up for failure at all.

Wolf-Ulrich Knoben: Thanks a lot. Ed, please.

Woman: Thank you, Wolf. I'm sorry to jump the queue. Michael, just to put a fine point on this in relation to voting to the extent that we can expunge the word "voting" from our vocabulary, I think that would be helpful.

The reason for that is, as Paul has said, and as the GNSO working group guidelines and the GNSO operating procedures make very clear, consensus building is not meant to be about voting. The only use of voting is in, quote-

unquote, "rare circumstances" when there's a poll and there's all kinds of procedures around how that's meant to be used. So in terms of consensus building, we're looking for dialog as opposed to voting and that sort of six-gun shootout type situation. So that's the explanation on that. It's not just a personal reluctance to engage in voting but it's really baked into the process. Thanks.

Wolf-Ulrich Knoben: Thanks for clarification. Is that clear?

Michael Graham: Yes. And I take it, it sounds like it might be connected with the idea of weighted something or another because it's difficult to have weighted consideration but…

Paul McGrady: Yes. So Paul McGrady again. Yes and no. One idea that was thrown out to deal with the math problem because, you know, there is the desire to have full participation but at the same time not stray too far away from how council functions. We have to keep in mind that whatever comes out of this EPDP will go to council. And then at council, I believe it's a super majority. And so there are a lot - we've already built in a lot of checks and balances and fail-safes into this. So I don't want us to get too wrapped up in this topic. And I apologize to everyone in the room for using the V word. Thank you.

Wolf-Ulrich Knoben: Thank you. Tony Holmes next.

Tony Holmes: Thanks, Wolf. Tony Holmes.

Just a question for clarity because I'm all confused now. I thought originally in that table, the figure-four constituencies referred to representation but also to alternates. I'm confused now whether that's the case or not and whether it's the same when applied at the stakeholder group level.

Wolf-Ulrich Knoben: Heather?

Heather Forrest: Thanks, Wolf. That's just a thumbs up to confirm. So, Tony, I think, you know, the characterization of what those labels are isn't 100% clear. But it's certainly the case that, as Marie has said, it's - as many representatives as we have, we have that same number of alternates as well, so each constituency. It's not a constituency basis.

Wolf-Ulrich Knoben: Okay, thanks very much for clarification. Last question for this part, Susan?

Susan Kawaguchi: I did take my hand down but I just wanted - not to belabor the voting but I do think there is an important element that Keith was trying to get to in the fact that in consensus, you really - the member or members are really representing their constituency or stakeholder groups and not their individual positions. And I think that's going to be really critical on this PDP that we don't - I don't see the problem for the CSG constituencies within the CSG but on other working groups, it seems to be that, you know, individuals would go rogue on what their community was saying. So then all of a sudden, you'd have this opinion that was totally off base.

And so that's what that's trying to - we're trying to get to a solution for that is why he just used the wrong term as a vote.

Wolf-Ulrich Knoben: Thanks, Susan. Sorry for mixing it up. Please go ahead.

Susan Payne: Yes, thank you. Hi, it's Susan Payne.

Yes, I just wanted to strike a point in the participation section at the moment which is with those two observers and talks about observers being on the mailing list but not able to pose and more particularly the observers would not be able to attend working group meetings. I raised that with Keith because it concerns me that it would mean that it would put quite a burden on the actual member participants in ensuring that they reported back in a very timely and detailed manner potentially would mean that they would not always know the

issues that every single person or every single group within their stakeholder group or constituency. And so I might think that something will - an issue and perhaps not report appropriately and would prevent people from sort of listening in real-time and being able to give kind of instructions to their members if they were, for example, a subject matter expert.

So I raised this with Keith and he said that that language was something which has come - that had kind of come in as template language. He personally doesn't think that that is a very transparent process, either. And so he did say that he would be proposing some changes to that. So I just wanted to flag that and I think, you know, assuming our, you know, people here agree, I think it would be something that we would support the notion that observers could, you know, quietly observe the meetings.

Wolf-Ulrich Knoben: Heather, please.

Heather Forrest: Thanks, Wolf-Ulrich, and thank you very much, Susan, for those comments.

So Marie has championed to the number of points throughout the discussion the idea of some kind of a mailing list that could be posted to. I mean, I think we're exploring some creative options on comps to make that effective but to also make it that we don't have one thing that one person has to read. It's just we need all of us another e-mail inbox but we're working on that.

To the point about observers not being able to attend, that language is in there really as a placeholder for the idea of it seems pretty clear that this group is going to us for at least one face-to-face session and Travel wants it to be very clear from a resource point of view that it's not the case that non-members would - or alternates indeed would be able to travel to the face-to-face meeting. So I think all of those are there as blunt instruments. I don't think there's anything in there that's not in the works in terms of clarification and it's certainly the case. There's been a number of calls for transcription.

So I think, yes, certainly transparency is the order of the day. Yes. It will find its way into the language.

Wolf-Ulrich, may I make one more call for - I know you want to move on. Yes? One more call for, say, next steps for us here. We need to think about right away irrespective of what the number turned out to be. We need each of us in our constituencies to think about the people that we're going to put up for this thing.

So the point that Susan made is an excellent one. Again, I don't think it's so much of a concern in our constituencies but folks who are going to be able to commit the time to this, I don't know if you've heard the scary numbers about what we're anticipating for hours that might go into this. You can invent your own fantasy on that. It's going to be a pretty heavy lift. It's also going to be a heavy lift going backwards in terms of reporting to your constituency. So you're going to be in the hot seat. But I will say you're only in the hot seat for a fairly short period of time because we have to have an initial report out by Barcelona. That's going to be the big push is between now and Barcelona. So anyone planning a month-long sailor on the Caribbean probably isn't eligible and I would like to join them.

Can we move forward, please, through our respective channels, start banging the drum on members, alternates, the workgroup? Forget what, you know, the label is but let's start doing that. And we also need to think about leadership as well. Thanks.

Wolf-Ulrich Knoben: Thanks, Sue, for that. That's what I would like to press to all of constituencies to do so. And hopefully our very last comment here on that and then we move ahead.

Tony, please.

Tony Holmes: And it is very quick comment. Thanks. Tony Holmes.

We haven't done this very much before but as - just through the discussion here, there's been a lot of concern about how we get feedback and everything else. I would like to suggest - and maybe this is something that the CSG exec can pick up on. I would suggest this is one time when maybe coordinated feedback from the three constituencies at the CSG level would be particularly helpful and I'd really like to promote that as an idea.

Wolf-Ulrich Knoben: Thanks for that. So let's go through the three other points in a short way as for information before we establish with Xavier Calvez.

The next one is, you know, we have this ongoing discussion with (unintelligible) on the board member election. It seems to be - it is now - there was a paper drafted in Puerto Rico that was coordinated. It was agreed upon from our side. I got very last message from the NCSG side that there is no further comment expected from their side. But I'm waiting for the very last input, the very last official input which is expected today or one of the other days this week. But I think I'm really confident that we can then close this chapter as well.

There was a very last comment from the NCSG with regard to the board member election. There was a question whether we should make reference to the due diligence process for board members in our procedure here. So I'm - would be open because it doesn't matter whether we put it in or not because it is - anyway, it is obligatory for new elected board members to go through a due diligence process which is set out by the ICANN board, you know, by the ICANN bylaws and they're not aware about that. So the question is here, whether there is any objection to that, whether just to make reference in the procedures to that.

Any question to that? No.

Steve, please.

Steve DelBianco: Wolf, it'd be fine for us to note that the selection process would include any mandated processes, including due diligence. You can't just cite the due diligence because it makes it seem as if it's the only process. I don't think we need it. I agree with you. I don't think we need it. But if the NCSG is really keen for it, I don't see why we would fight to keep it out.

Wolf-Ulrich Knoben: Oh, yes. Thanks for this. Thanks for this. I take care about that. Thank you very much, Steve.

Okay, next point is also, you know, as Heather pointed out in the councilor meeting, the upcoming chair election process, I've learned from the timeline we have - this house has time until the mid of September around to nominate candidates. So it's not apt to now allow to talk about candidates here. But we should talk about a process, also a process on house level with that. There has been submitted a draft process by - I think it was drafted by (unintelligible) from the NCSG and I shared that here on the ExCom. I've hoped that it has been shared also in the constituencies. Otherwise, I would like to ask you to do so. And so my suggestion is that we should have also a small team to talk about this process in order to be ready with the process at least, at the latest point, in mid of September when we come - when it comes into nominations.

Would that be accepted? And my suggestion would be that they could have participants from each constituency, one or two. And you should come up to the - to our common list-based participants in the drafting team and then we do it as we did with the board members' election processes now.

Would that be accepted? Or are there any specific questions for the process or for the content of it?

No. Thanks. Well, I'm going to now to send it around again and then I would like to invite you, our trustful volunteers, in the drafting team. Thanks very much.

So, Chantelle, could you alert Xavier Calvez? Oh, he's already here. So - but the very last point before we discuss with him, the question of how we deal with a business outreach or recruitment activities in ICANN63, I know that two of our constituencies, ourselves and the BC are in contact with Chris Mondini. To that respect, I just wanted to say we had a meeting already with them. And so we saw it as very useful to have, well, a separate approach in Barcelona from the ISP side, as well as from the BC side. The main thing is, well, to coordinate the approach in a matter, in a way that this is not overlapping and that, you know, there is no - not a cost - well, there's not necessarily costing that we have problem, well, to solicit participants from the same potential audience also.

So, that will be my request and you are going to discuss that internally.

Are there any comments, questions to this point?

No. Then welcome, Xavier Calvez.

Hello, Xavier Calvez. Welcome.

So we are just going - stepping into the - to our item here about - talking about auction proceeds. And I would like to invite our members of the Cross Committee Working Group on auction proceeds just to briefly update us on that and then we have a discussion exchange with Xavier Calvez on that.

Tony Harris: Yes, thank you. Tony Harris here.

Marilyn Cade, I think you're sitting back there. Don't you want to get to a microphone?

Marilyn Cade: I'm here.

Tony Harris: Because then we can probably cooperate in this update.

We have recently been circulating documents to you. I'm sorry, it's a lot of things to read from how far the auction proceeds CCWG has advanced. There is a preamble which was more or less agreed upon. There is a list of examples of potential acceptable applications, which has also had a lot of work. And you will see in our request for opinions on the four mechanisms, as they are called, which would be the organization - the possible organizational structure to take forward this program.

Now rather than hear from me, I mean, we can do this in the mail. We have Xavier Calvez here.

Is Sam here also? I'm sorry.

Well, maybe it would be more productive if you might like to ask Xavier Calvez questions about their feelings on how this will impact ICANN financially and what risk might be involved. Since we only have I think another ten minutes, maybe we should go ahead with that. Thank you.

And, Marilyn Cade, do you want to add something? Sorry.

Marilyn Cade: Thanks, Tony.

Let me add something very, very quickly. So, I know that it's been very - Marilyn Cade for the record. I know it's been very challenging because there's been so much other work going on. The group was launched in January 2017. But there's been a huge amount of preliminary work and we're - and as Tony summarized, we are looking at four different models, two of which would be located - would be housed within ICANN and two of which

would be external. They each have different implications. What's going on right now next door is the CCWG AP, Auction Proceeds, Group meeting. Following the meeting, I think we'll have more to report to you.

There is - I did post my individual analysis of all four models, which I'm happy to share with you. I made it clear it was my individual view. But we also received now two letters from the board where the board has shared with us - we have two board members as permanent liaisons. And that is Martin) and Becky). And they are very, very responsible and attentive to being with us and reporting back to the full board. We received two letters from the board that they have passed through to us and, for instance, we're getting such guidance as allocate the funding in tranches, which would mean in sort of batches, et cetera.

We're not getting guidance on which of the four options to choose. There's expectation we will do that work. But there is guidance, as Tony said, about being attentive to liability, not only tax liability but other kinds of liability and implications to ICANN because this is a time-limited distribution of funds. It is a finite amount of money, whether it will be $130 million, which is roughly where we are now, or the dot-Web auction funds will go into is yet determined. The process would be the same regardless of the amount. Still $130 million is quite a bit to distribute.

So, we're working hard. And we have cancelled our last three working sessions because we have so much work to do internally. The time frame for us to get you something in as a - to get the full community something to comment on is three weeks ahead of ICANN63. We will be in the 40-day public comment process during Barcelona. And there is the idea that there would be a public discussion opportunity while the public comment process is still open. But there are questions about the implications for ICANN about each of the four models and I think that's what we need to deal with Xavier Calvez about. Thanks.

Wolf-Ulrich Knoben: Thanks very much, Marilyn Cade and Tony. Well - and that's probably why we have Xavier Calvez here. I'm sure he is following very diligently, well, the discussion on the group and had an opinion on that. And as far as you can, we would be interested to be able to hear and to share views with you and to hear from you about - yes.

Xavier Calvez: And to answer the question about Sam Eisner, so Sam Eisner whom you had invited also to come here, she and I have decided to split forces. She's on the CCWG Auction Proceeds Working Group right now.

I don't know if there's any specific questions following what Marilyn Cade has said about the work currently of the CCWG AP, and I'm very happy to try to answer any. Otherwise, I'll share a few thoughts from an ICANN organization standpoint if you would like.

Wolf-Ulrich Knoben: Yes. I think that will be great. Well, if you could do so, so just share the thoughts and - yes.

Xavier Calvez: Thank you.

So, relative to this project, there's a number of aspects to it that need to be looked at. So Marilyn Cade indicated that this is a finite amount of money, of course. It's a significant amount of money, but a finite one. So in looking at the mechanism, the questions of how permanent or temporary the solution that is being put in place needs to be designed. The group is looking at this type of questions.

Of course, from an organizational standpoint, it has an importance if the mechanism is "lightweight," in quotes, and "temporary versus creating permanent structures or heavy structures," in quotes. So it has an impact on cost. It has also an impact on implementation. It has an impact on the amount of work that it requires to support it.

An illustration of that if I make it very simple -- and that's choosing from the mechanisms that are currently being evaluated -- if we simply create a department within ICANN to help this and support that process or if we create a foundation that's very different amount of work and it has a lot of different implications from a corporate governance standpoint and from an administrative support standpoint as well.

The other questions that are being reviewed and discussed by the group that are very important are what are the constraints that the process and the grants ultimately considered need to meet. One - first is that the grants need to be consistent with ICANN's mission. That is very key element. And this is not for any other reason than legality. So it's not something there's also a choice about. It needs to be within ICANN's mission. Otherwise, it's simply not legal. And as I said before, I do not want to go to prison.

And the other aspect is therefore to make sure that the fiduciary requirements that are imposed on the organization on the board, on the officers of the organization, the fiduciary requirements need to be well-supported by whichever mechanism in process is being chosen. And this is obviously something that the board, and certainly me as an officer, will want to give particular attention to. And I know that the CCWG group members are - have been extensively briefed on the topic and are very conscious of that. But this is certainly from an ICANN organization standpoint, the fiduciary requirements that apply to any management of funds at ICANN will require to be met as well.

A quick illustration of that, that means that there needs to be very clear documentation of the purpose of what the funds are being used for. We - just to be legal in our activities, we need to make sure that the funds are being used consistently with our mission, that we know where the funds are going, that we know how they are being used and for what purpose and that there is traceable and auditable documentation of that.

So that seems fairly basic, but it needs to be organized in the context of a grant type of project which is not of course something that we currently at ICANN do. So that's something we want to be really careful about.

Just one last point. I think it's important also - and we will evaluate that very carefully in the future, is once a grant is being made is not when things stop. You need to then ensure that the grant has been used for the purpose that it was intended for. And that is not a small task. It - my point there is obviously that it requires to maintain procedures to evaluate how the funds have been used or are being used by the recipient.

And very, very last point, that creates of course a requirement on the organization that needs to be very carefully evaluated and that requires maintaining resources and processes upfront. And the last part of what we and ICANN will need to consider is how do we accommodate our requirements for accountable transparency with the public and the community on this program. Not all organizations who distribute grants have to worry about that. We do and we will and we need to make sure that, whichever mechanisms, accommodates for clarity in our processes, transparency on our processes at all steps, communication of information, access to information. That of course is not unusual for us, but it's not common either in a grant type of situation. And we will simply need to make sure we accommodate for that.

Wolf-Ulrich Knoben: Thanks very much, Xavier Calvez, for that. And, well, what I got and very interesting is, well, I understand that you are really looking that, you know, the ICANN laws or the ICANN bylaws are also taken into consideration and that there is not - will not be a case where this is out of the scope of ICANN bylaws here.

So my question would be - one of the question is, well, from your point of view from ICANN, well, is there any thought about or thinking that you got the impression, well, that this team, the Cross Community team might go, well, a way which is dangerous, you know, which could be dangerous, well, in this

respect? So is there any opinion at the time being right now also and what is - what would be interesting for us? Thanks.

Xavier Calvez: Thank you, Wolf-Ulrich.

No, there's no concern at this stage. I think the CCWG has been very careful in - and showed a lot of desire in including Sam Eisner or I to receive the requirements - to receive information and briefing and explanation on all the aspects of this topic that could impact it and that would impact the organization. So the group - we, Sam and I, participate at every meeting. We are solicited by the group members all the time for our opinions and providing advice when necessary.

So I think at this stage, the work of the CCWG is very thorough and very carefully considers the aspects that I mentioned earlier. Simply, these are not easy discussions to be had. How do we ensure that the grants evaluated are within mission? This is something difficult to - it's easy to say, but it's difficult to operate.

Another aspect that is challenging is crystallizing thoughts on the decision-making process. Are we going with the - an independent panel? If we go with an independent panel that evaluates their requests, then how do we ensure the fiduciary duties are met? So if you go far towards an independent mechanism, then the fiduciary duties is the challenge. If you go with a mechanism that is very internal control, it's easier; but then how do you ensure independence of the evaluation?

So those are the dimensions that are being evaluated with the (unintelligible), carefully considering those, very open to receive advice. And I feel very comfortable right now that the conversations are not risking to go into places that would be dangerous for the organization. I think that it's a lot of work. It needs to get also to conclusion at some point. So I think that - and just last one thought; the group is also very conscious of not creating a mechanism

that would be costly. So I think that's a very significant part of what the group has been looking at and I think it's a very welcome awareness, of course, particularly for me.

Wolf-Ulrich Knoben: Thanks very much for that, Xavier Calvez.

Well, we are already overtime. So - but maybe a very last short comment from Marilyn Cade…

Marilyn Cade: It's Marilyn Cade. I just want to make a very quick comment because I'm perhaps more familiar with the - some of these processes than - and auctions than others for a number of reasons. And I don't disagree with Xavier Calvez that many of the grant - the granting organizations don't have a tie-back to a particular accountability. However, I will say the foundations that are set up by companies that are regulated -- I might have worked for one -- foundations that are set up by companies that are regulated, whatever country they're in do have a more stringent kinds of tie-back responsibilities and limitations.

So it's not that there are no examples out there. I don't want to go into it. But I just want to urge people, too. When we finish the work at this meeting that perhaps we could have a more detailed discussion within the CSG membership to let them look at where the options are that are being evaluated and what the perceptions are at that time of pros and cons.

And I'll just give you an example. Putting the details of each grant on ICANN's tax return is, for instance, something we should examine and understand on how that will perhaps - so there are these kinds of things that'll be good for people to understand. Certain options have different implications to consider. And we haven't gotten to full details yet.

Wolf-Ulrich Knoben: Thanks very much for that. I'm sure Xavier Calvez will take that. Thank you.

Let me just - at the end. I'm sorry, end. So I have to end up because, you know, we'll be overtime here really. And there will be another session though, an interesting session there.

So I would like to take the opportunity also to thank the members of the CCWG, the Cross Community Working Group. Tony Harris was a member of that until now, today. He was a member I think already on the drafting team. That means more than two years or so is that. So thank you very much for the work you have done on behalf of the CSG for that. And thank you very much also for the smooth process, well, to handing over to Marilyn Cade that. So thank you very much for that.

Yes. That's it. Thank you very much. And thank you all the participants for this meeting today to make it lively and have a good discussion. Thank you very much.

The meeting is adjourned. Thank you.

END