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GNSO Working Session Part 1

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Heather Forrest: Okay good afternoon everyone. Thank you and very much this is a meeting of the GNSO Council and the ICANN Board. If I could have our IT folks tell us when we're ready to run that would be brilliant. Thank you. Fabulous thank you very much.

So good afternoon everyone and welcome to this meeting of the ICANN Board and the GNSO Council we have three items in particular on our agenda today for our meeting with the board.

I will note that immediately following our discussion with the board the GNSO Council will continue in its working sessions with the three additional topics that you see here discussions of motions in preparation for the GNSO Council meeting on Wednesday, and preparation for joint meetings throughout this week and preparation for the high interest topic session that will happen this afternoon.

But this is our dedicated time to meet with the ICANN Board. And we thank our board colleagues very sincerely for making time to join us today. And we should have all of our councilors and board members at the table. And I believe we have two councilors still to join us. And with that we have our three topics here budget for the EPDP, discussion paper on the proposed unified access model and further consideration of the picket fence and its impacts on the EPDP.

These three topics are specifically pulled from the headings of the most recent correspondence between the GNSO Council and the board. And I thank Cherine Chalaby and colleagues very much for the reply that was received last night and circulated to the council this morning responding to the questions that we most recently raised at the end of last week. So with that a welcome from me and let's go ahead and get started and I'd like to turn to Cherine Chalaby. Thank you.

Cherine Chalaby: Thank you Heather Forrest and thank you everyone. I too look forward to an open and collaborative discussion between the GNSO Council and the board. As you said regarding those three topics we have provided some initial thoughts and my colleagues and I look forward to engaging with you and building on those thoughts. So I will cover the budget topic and Chris will cover the other two.

Regarding the budget let me start by saying that the board and ICANN org have a common objective to provide the GNSO with the service support required for a timely completion of the EPDP. Of course at this stage it's very difficult to determine specific amounts but rest assured that the board stands ready and looks forward to considering prudent and fiscal responsible request from the GNSO so that we can help you carry out your work effectively and efficiently. Happy to take -- I don't want to say more than that -- but happy to take questions if you wanted to.

Heather Forrest: Yes thank you Cherine Chalaby, this is Heather Forrest. And so I very much appreciate that input in relation to budget. This has occupied a number of our discussions and certainly recognize that we're not in a position at this stage to identify specifics however understanding that the board support exists is very helpful at this stage. Colleagues any questions so this was a significant discussion call it in our initial call held last week early last week in discussing drafting team issues? Any questions at this time for serene and colleagues? Michele?

Michele Neylon: Thanks Heather Forrest. Michele Neylon for the record, Cherine Chalaby, good afternoon. Thanks for the reply. It's – it is helpful. I think we at the moment are kind of in uncharted waters in that we're conscious of the fact that we have a very tight deadline in order to complete this work.

And from the discussions we've had on council and within our respective stakeholder groups I think most of us would agree that in order for this to be done within that strict time frame we probably will need to have face to face meetings and other support for that.

So I suppose the while we couldn't ask you specifically, you know, give us X amount - could you please allocate X amount of dollars Y amount of face to face meetings when I think at this juncture because we still haven't finished that scoping exercise I think what we really want to do is just put it on your radar that we have – we definitely will need quite a lot of support for this initiative and just to make sure that you're aware of it that. Thank you.

Goran Marby: Michele yes we are all aware of and I can't see how you could do that without some face to face meeting given the time so absolutely. Thanks.

Heather Forrest: What we're not allowed to do mic.

Goran Marby: We're saving on the amount of mics apparently. A point of order please, Michele. The chairman said we are of course positive to support this. But I

also think it's important that (unintelligible) sitting under a table and said we're going to support whatever happens.

That the GNSO Council comes back with some sort of formative proposals including meetings so we can have a serious discussion about it and provide you. So we may so that the cost doesn't just magically the envelope increases this time. Thank you. That's what he was supposed to say as well.

Michele Neylon: Thank you Goran. And I think we agree with you on that. I mean we've seen in the past where some of these initiatives may have kind of gone off the rails as it were because it just kept committing and expanding. That's not what we're asking for it's just more a case of let's start that conversation now so when we come to you in say a week or two weeks' time or whatever it's not a big surprise.

Goran Marby: Xavier is eagerly expecting your input.

Heather Forrest: Chris, please.

Chris Disspain: Thank you Heather Forrest. And thank you Michele. I just wanted to say if I remember correctly -- I was just trying to find it but I can't find it -- in the letter that you sent Heather Forrest there was a reference to a facilitator experienced in dealing with conflict I think. Did I see that? I think so. And I just wanted to call that out and say look I mean that's great.

If you guys are sort of acknowledging up front how hard this is going to be and you really need help I'm really pleased to see that because I think that's really important that you get, you know, you start with that acknowledgment and then take care of it straight away rather than waiting for the train wreck. So I just want to say that's really great to see thank you.

Heather Forrest: Thanks Chris, thanks Michele, thanks Goran. And important to note here that in our precise questions to the board we did underscore ourselves the need for fiscal prudence and efficiency and effectiveness.

Yes that really is the mantra of the GNSO Council this year following our strategic planning session. And everything that we've done is in - is with that in mind, so thank you very much. Any further comments questions in relation to budget? Donna please?

Donna Austin: Yes thanks Heather Forrest, Donna Austin. Chris just to follow-up on the point you picked up on the mediation. So I understand what the SSR2 that when they thought help from a facilitator or maybe there was a process that had to be going through to acquire for want of a better word the mediator we haven't had substantive discussion around how we would - what the council thinking is on that. But is there a process that we would have to go through and is there a kind of timeline associated with that?

Cherine Chalaby: Thanks Donna. Yes but I mean in the sense that I think it's procurement thing if I remember correctly with SSR2. You need to – I mean ICANN has a list of steps you needed to take so the sooner you ask for better. But at least I'm fairly sure and I don't know I mean Goran can probably answer better than me but I'm fairly sure that these things can be speeded up if necessary. If I remember correctly in the SSR2 situation they managed to do it fairly quickly. So…

Heather Forrest: Thanks very much Donna and Chris. And it's an opportune moment albeit not on the agenda to thank the board for its support for that effort in relation to SSR2 and getting it back underway. Any further comments questions in relation to budget for the EPDP team? Michele?

Michele Neylon: Yes thanks Heather Forrest. Michele again for the record. Now I think this, you know, this is something we discussed at council when we had our strategic meeting back in January. It's something that we were asking the

finance team to kind of help us with was to give us a little bit more insights into the costs associated with policy development processes. So it kind of flows from the conversations we had back then.

So for example, you know, having (Cates), and (Marika) and various other policy staff following a particular project there's obviously a cost, you know, setting up phone bridges, Adobe Connect, et cetera, et cetera, et cetera. So it just - that goes back to Heather Forrest's point that, you know, when we've been looking at this we are very conscious of the fact that there are budgetary restraints but at times we do lack visibility on some of the costs associated with these projects. So we've just been asking a little bit for a little bit more information on those in general. Thanks.

Goran Marby: Thank you Michele. And if I may your observation is quite right. And we had two problems. One of them is that it's hard for us to budget something we don't know about during the current (budget) process because if we leave a hole inside the budget which is just lying around that's against the principles how we do budgets.

And that's why for instance we have the discussion about how do we - is there any way we can finance PDPs before they actually become a decision for instance if we know there's going to be new work like a new round or something.

So we in the general thing we are - the board Cherine Chalaby has instructed me to look into we can look about the budget cycle as a whole so we can take that into account going forward. And the cost measurement you're looking at yes that is something that we need to look into and just – and give you as well. So for once I think I agree with you Michele.

Michele Neylon: Goran with all due respect you have been known to agree with me from time to time. It's not that odd really.

Goran Marby: I'm trying to stay away from sort of agreeing with you…

Michele Neylon: So my - but it's inevitable.

Heather Forrest: Thank you gentlemen. A helpful fact to note as well that this discussion about cost based accounting is one that I had a chance to raise yesterday during the SO, AC chair's forum with the executives and further follow-up on – in the dinner last night.

And I've emphasized the importance of the discussions that we had in January around allocating our resources effectively and the need for data to be able to do that. So we will follow up on that. Further comments questions in relation to budget?

Seeing no hands Cherine Chalaby back to you and then perhaps over to Chris on Item 2 the discussion paper on the proposed unified access model.

Cherine Chalaby: Thank youHeather Forrest. This is Chris Disspain. Yes we have responded. We responded to you last night. I'll just kind of read a little bit from the note that we sent you. The objective of the framework posted is to seek legal priority and key issues related to a model.

Additionally as we all know several communications including from the EPDP and the European Commission have noted the importance of continuing discussions. I really - I mean there's nothing really for me to add to what we said in the note. I'm very happy for us to have a discussion about it because as our note says we welcome the opportunity to have a discussion. So perhaps the easiest way is for people to ask questions and we'll happily respond if we can.

Heather Forrest: Erika please?

Erika Mann: This is Erika Mann. It's a personal question so not reflecting comment GNSO perspective. I wonder when you look into the access options and the access models which are possible for the future for me it seems it's not going to be much easier than the overall system which needs to be set up for the Whois. It's quite complicated to have a unified in uniform access model.

So my question is, are you looking into in particular into these countries which have very high level and very restrictive access procedures to protect the data? And if you think because you are so much focusing on the GDPR and which I believe it's already complicated when you globalize a model which is only pretty much only designed to protect data from a particular region.

But if you do this then you have to understand that even in the (unintelligible) there will be no uniform system for accessing data because the country in particular for law enforcement a country like Germany will continue to have a definite opinion and protective model than some other data protection regimes within the European Union. So are you taking this into account?

Goran Marby: Thank you. And I'm just thinking as the CO. First of all your question is extremely smart but it's much -- yes you're always smart -- but it's actually much worse than that. So ICANN orgs role in this is to try and find the legal landscape according to GDPR. The things that you are talking about I would say belongs to the community and the policy discussion. So we only focus on the actual law of it. And you're going to hear – I'm going to be in several sessions and so I'm going to sort of say shortcut everything.

Up till now the community -- and we together should be proud of what we accomplished in a very short period of time when it comes to the GDPR in coming up with a temp spec the calzone model. And I promise we will never call anything out according to your name other pizza. I promised my team that. But the calzone model went through a very fast process and we had to invent the process.

And I don't know if you've seen that but the DPAs of Europe actually sent us a letter which is ratified by the board where they actually said that they sort of complement ICANN for the work we've done in a very short period of time. And actually tells the individual DPAs to take that into account the ones who do the filing.

So far what we've done is shadow play. We were able to do that because there's law there is restrictions in the law about hiding data by taking away universal access to data. That has been something that that we could figure out.

Now comes the problem the one who collects Whois data are not the ones who uses the data. And the reason why they use the data is because the policy set by the community through contracts. That is at the symmetry that the law doesn't cover.

So there are 2500 data controllers our dear friend the contracted parties with some Whois data because we told them so but we don't use the data either ICANN org as a legal entity doesn't use the data either it's someone else uses it. So and the law has not foreseen this.

The other thing is that the law has not foreseen the fact that of these unified access model because the law is specific in the fact that it's the individual data controller or data processor who are responsible for that information in the first place.

So it doesn't mean that you can go into somewhere in the law it says okay here are how you do a unified access model. The reason why we call it a unified access model is also because our understanding is that under a unified access model there could be different accreditation models depending on different laws.

So law enforcement can be one law, investigator journalists could be another one. So our - what ICANN org now is trying to do because we also we were also asked to do it you know that the DPA has actually asked us to come up with something so they can have a look at the understanding of if it's possible to have a unified access model.

So we've give them a sort of general description. We haven't given it yet because we seek your input to it as well. But I have to be very serious and say this I sort of said to you back a year ago in South Africa that I'm sort of confident that we will have advice from the DPAs when it comes to the overall structure of a tiered access model which we received which increased the level certainty for the community and also increased the legal certainty for the contracted parties. Not everybody likes it.

I don't know the answer to the question if it's even possible to have a unified access model or if the law will say that it has to be individual responsibility for the contracted parties going forward.

So - and I think that, that will have a great impact on any policy work for the community. So what we try to do is to find out in legal circumstances that the community can make decisions upon the relation of GDPR. I don't take sides. As you know in the discussion what is good or bad in this but that's the aim we're trying to figure out.

The more - because if we can't find the legal environment for an access model I think that will have a major effect on the policy work within ICANN. So that's what we're trying to figure out.

So that's why we also do the legal case in Germany because we are – we made a temp spec, the board decide on temp spec and there is one thing open how much of the data it can collect? And now we go into the court about that.

We - that's the overall (unintelligible). Your next question is very good as well because what also said do you also take into account other countries? One of the things that Cherine Chalaby as a head of the (unintelligible) but also in charge of my goals and one of the goals we have discussed Compensation Committee but also my chairman.

But we are talking about one goal how to engage with the community when we see much more legislative proposals around the world that can have an effect on our ability to policy. And how do we as ICANN org and the rest of the community engage in those discussions as a technical organization and not a political mission?

And that is something that we haven't – we need to talk about to be able to do that to take that into account as well. But at the end of this I'm a facilitator of the discussion. I'm trying to put information into it but it's my I don't part – I don't put sides in the policy debate.

So just to give you are there any possibilities for unified access models? The ones who are according to the law and the legislature the European member states together with the European Commission and the DPAs.

A lot of this is now in their hands going forward and that's why we're asking all three of them questions what is - if it's possible or not. Thank you. Now you hear an answer that you'll probably hear a couple of times this week. So thank you for the question Erika any follow-up?

Erika Mann: I have many but I don't think I should occupy the time now.

Heather Forrest: Okay thank you Goran, thank you Erika. Further questions on the unified access model and the discussion paper that we've received particularly in relation to how this impacts the EPDP? Michele?

Michele Neylon: Yes thanks Heather Forrest, Michele for the record. I suppose one of the problems we had with looking at this paper kind of coming out as it were out of nowhere it was very hard to understand how this fit within the EPDP because the entire conversation around access was something which was referenced in the temporary specification. I know that certain stakeholders within the ICANN community are very interested in resolving this issue.

So I suppose the question from my perspective and definitely to a certain degree from the registrar's and possibly others is how does this feed into the EPDP as we scope it and move it forward, you know, what do we do with that? Do we kind of park this leave it sitting over to one side and kind of let you guys argue across multiple courts and sending love letters to DPAs for the next ten years or do we look at bringing this into a EPDP that we're going to kick off but then have, you know, some legal decision or some other plan outside that entire process impact? And this goes back for me as something that I'm not very clear on. Thanks.

Goran Marby: For - I'm sorry if it came as a surprise. We did actually in already in the calzone paper have the reference to this model. And so it's been there all the time because we knew that this discussion has to happen.

Communication exists when the receiver understands or gets what we're saying so we're sorry if we missed the communication. I also in our last meeting I referenced this many times.

The second thing is that we actually got asked by the DPAs in the letters from them so also from the European Commission that we have to continue to work on this. So I'm sorry if it came as a surprise. When it comes to the EPDP it's really up to you guys because what we try - I think most people agree that this is uncharted legal territory where we thinking with our knowledge about how that all works that it's very hard to get a unified access model because the law is so specific about the controllers – the one who states the data the responsibility for individuality.

And what we're trying to do here is to do a unified access model with the same rules that applies to everybody which means that everybody who has the data has to accept that model and think that this is the legal way of doing it. And that is a catch 22 in the legislation. I think it will have an impact because it will increase the knowledge from the process doing it. And the answer is it depends on -and so far we've actually been able to shorten down it.

When someone told me we got the first letter from the DPA 2003 I wasn't born then so I don't know but and we haven't done that much for it since two – 15 or 16 years but we were able to during a very short period of time from actually August last year until December last year to start getting information. But with that said I think it's - this is going to be a tougher one because it's uncharted territory legally.

And that's why we want to ask the questions continue the dialogue but it doesn't mean that we actually will get an answer. Well answer could be, no you can't do a unified access model.

I give you just a small hint of how complicated this could be. Law enforcement there are now discussions within the European framework about access to law enforcement that due process means that you can ask the registrar registry for information without notifying the person who actually is getting investigated.

There are DPAs (unintelligible) that if the police force gets access to data sorry police force gets access to data by the individual that individual because it's not due process has to be informed at the same time.

The responsibility for that is twofold one with law enforcement and one with the contracted party which means that if the contracted party doesn't do that it could be according to GDPR breaking GDPR and you plus (unintelligible).

And also the fact that if you hand over information to the police you are now responsible that a police force actually handles the data according to GDPR because of the virus affect. There are many things in this that are so unmet that I think it's only, you know, my job is to provide you with that. That's what I'm trying to do. So will it have an impact on – yes if we get some answers? That's the truth.

Heather Forrest: Thanks Goran. I have Paul followed by Keith.

Paul McGrady: Thanks. Paul McGrady, Councilor for the IPC. So it wasn't a surprise to everybody. What the surprise was from the IPC point of view and I have not taken a poll of my constituency -- so hopefully I'm not in trouble -- the surprise was that this wasn't dealt with earlier on that it wasn't part of the temporary specification.

You know we pushed for something like this all along the way and from our point of view the temporary specification sort of pushed the buggy out and now the horse is going to follow it.

So we're glad to see this. We're glad to hear how you guys are thinking about how it fits into the expedited PDP. We think it raises a lot of questions but that was the purpose of the document. And certainly the example of the issue of making sure the police inform the person they're investigating that Whois records have been turned over to them highlights the complexity of expanding GDPR protection to people outside of the European Union who otherwise wouldn't have access to it, you know, an American who registers a domain name through an American registrar the temporary specification obviously provide some GDPR cover for those people that they wouldn't normally have.

I'm not excited for the registrar or registry that has to make sure that the investigated party gets their information - gets told they're being investigated

and by who especially if that's in front of a grand jury in the United States. But so there's a lot of complexity here that we have to, you know, unpack. But I do think that at least on our call it seemed the last GNSO Council call it did seem like we had a good vibe that we were prepared to unpack it to include the issue of access I think into the EPDP model. At least I hope we do.

And that, you know, people have - they don't have their complainer hats o right we have our can do hats on, on this one. So I think that you'll like seeing the progress we make in the upcoming weeks because I think everybody wants to, you know, get on and chew this issue up and see the community inputs that come from the posted questions and fold that into the process because we've got a situation now where there are a lot of bad guys out there that are able to act in an anonymous fashion.

And I think that most people around the table don't want to see bag as being able to act in an anonymous faction. So we're all sort of unified on the principle. So it's just a question of how quickly we can move to make sure that GDPR principles are respected but at the same time that the Internet remains safe and reliable so that people still want to do business on it. Thank you.

Cherine Chalaby: Paul this is Chris, thank you very much. I just wanted to respond to your first point about surprise and it not being in the temp spec because there is a very, very important distinction and I think it's important that it's understood and that is of course if it had been in the temp spec than it would have been a mandated process that would have had to been undertaken. And the point is we don't even know if it's legal yet.

So the purpose of putting out this model and of getting community coalescence around the basic understanding of that model is that we can then go find out whether it's legal or not. What is not going to happen is that the DPAs are going to give us an indication on whether a principle is acceptable. What they will do is give us an indication when we come to them

with something substantive about whether they think that's acceptable or not so that that's the key difference and it's important to understand that. Thank you. Goran did you have anything else you wanted to say?

Goran Marby: No I'm just happy that IPC and Michele today has said something positive. I as a general remark we're probably going to talk about this many times this week. I mean first of all I think I mean this is a personal observation of mine. The only reason that people the DPAs and the European Commission and the member states are talking to me or us is because the strength of the multi-stakeholder model and this combined strength of the community.

It might feel strange that we always debate we always, you know, seem to not come to agree and the Whois debate has gone on for a long time and there's a lot of vested interest in it. But now we are I believe we had the discussion during the board meetings that what we're actually talking about here what we're actually talking about is that ICANN's communities view on the balance between the right to privacy and the need for information. And that is the no wait - if we could get away together of actually working on that, that I think would solve many issues.

And I'm – I believe in the ICANN's community to come around that. Everything else becomes mechanics. And that message to - would strengthen our message about the importance of Whois but also the importance of privacy regarding anything we do because it's not only system we have. We have thousands of system contains name of privacy information. And the Internet is sort of built around which was very specific.

So if I would, you know, if we had to do things in mechanical order we are not a regulator we have to abide by laws. Not everybody will like them. And you can always blame me for the laws but the thing of the matter is that we're trying to provide you as a said with legal clarity. But I also think that the community now has an important mission to think about this not only from hosting, and access, to what, and to and which circumstances.

But also what is ICANN's view on privacy when it comes to balancing the right to privacy and the need for information? That is I think if we solve that issue which I think we will you will we will come a long way in the rest of the discussion so thank you. Sorry for being passionate again. It's Monday. I was get passionate then.

Heather Forrest: Thanks. So I have Keith, Tatiana and Stephanie.

Keith Drazek: Okay thank you Heather Forrest. Keith Drazek, Registries Stakeholder Group Councilor. So yes just a couple of quick reactions. I think this has been a really, really helpful exchange and a constructive conversation. I think I agree with Paul and I agree with Goran about the significant complexity that is facing us here.

But also going back to Paul's point I think there's a strong commitment at the council level and across the GNSO to tackle this issue and to do it together. We're all in this together including ICANN org as far as the impacts.

And so I think this is a sort of a watershed moment and an opportunity for us to seize this day or these next 12 months or 11 months or whatever it is and actually come up with some progress if not a, you know, a solution within that time period. One of the things of the council is focusing on this week is trying to figure out how best and most efficiently to scope a PDP and EPDP possibly a parallel - two parallel EPDPs. These are the things that we're wrestling with.

Right now we have an EPDP that will be triggered because of the temp spec right? The temp spec did not include the uniform access model other than as a reference in one of the annexes. So there's an opportunity for us possibly to say we can do this with one EPDP.

But we may recognize that these open questions the legal uncertainty around the uniform access model could be a problem for focusing on the temp spec itself within an 11 month time frame right and that it may be better treated as a parallel perhaps on the same timeline.

But I'm not prejudging any outcome here because that's the focus of our conversations at the council level this week. Just wanted you to know as board and as a board that we are committed to coming out of this week with some significant progress around the scoping, round the possible membership structures and a number of other issues related to this topic.

I think just to wrap up I think we've recognized that this question of access and accreditation is a very, very important component of all of this and it's now a question of how best and most efficiently we structure our work. Thanks.

Goran Marby: I have repeatedly over the last two weeks got questions and even sometimes I - one thing I enjoy is when people write articles or anything and tell me what I think because it always helps me to think the intention Goran has or org.

But I often got the questions what is your endgame Goran? Do you want to have another PDP? Do you want, you know, how do you want to do this?

I don't have an end game. The only thing I'm trying to provide is information for the community to make decisions. I think that's a very good question. I don't have the answer and I shouldn't have the answer to that question. I'm totally trusting GNSO together with the rest of the community because this is a - you have an extremely important role also bringing other parts of the community into this discussion. And I know that many other parts of the community are so interested to support and help in this discussion.

I think one of the good - Steve Crocker said to me when I joined the good thing with ICANN is that we're not a government. Sometimes we do behave

like one when it comes to (strategic) procedures but let's work together. My team is here. I think Cherine Chalaby will echo the fact that the board will be here as well. We'll work it out. Thank you.

Heather Forrest: Thanks very much Keith and Goran. Tatiana please?

Tatiana Tropina: Thank you very much, Tatiana Tropina for the record. Goran I'm really sorry that I might sound a bit like a broken record but I would like to come back to policy versus this paper for the comments because I really I'm still troubling to understand this process wise.

So in other words where does it belong to you were telling us and so to Michele's question it's up to you guys. And I take it as a statement that it belongs to the policy processes or am I wrong was it like - it's not I haven't finished yet.

So on the other hand you're saying we want to collect your comments. And apparently the paper is addressed to collect the comments from the community so where does it fit into which process? Are you trying to start the PDP? Are you trying to start the community discussion? Are you trying to start the processed in ICANN that ICANN is going to come up with something and impose on us in the absence of policy processes so what is the main message here? Where do you think this all belongs?

Goran Marby: Well first of all I don't have the power to impose anything on anyone, me personally. There are days that I would like to. I shouldn't have said that should I? I would - in order - and we - what we did I think that the calzone model showed that we can have a process that actually we get community - because what you don't want me to do is that I go - if we now recognize that we need to have guidance from the DPAs at EC we need that to listen to any input to any process however we define it.

I don't think that you want me to write something down go and speak in a dark room with the DPAs what I think. So instead of doing that what we're doing is to recognize that we need to ask questions.

We decided to use the calzone model where we go out publicly and say that these are thoughts and discussions we are having please if the community thinks we're wrong we're going to provide that as well. So we can ask the right questions to the DPAs so you can get answers that you can use in the policy work or whatever you do with it because there are so many legal uncertainties.

So the first message we sent over to DPAs already was in December or something when we sent out the description of the calzone model. We talked about the assumptions for an accreditation code or conduct and all of that. So we - and the answer they got back formally to us let us expand on that ID. To be able to come up with an answer they wanted us not only to say that we need some sort of accreditation model legally we also have to change that after we develop more understanding is that so give us examples of how this could work so we can actually look into it?

So we are in the process this time as I said again more legal uncertainty than we had less time. We have to ask questions. I want to do that as transparent as I can but I don't have any decision powers when it comes to what is going to make in the up. My hope is that we'll provide information for the community to continue to work.

How that will be back channel - back channeled that's a bad word. How that will be taken back by the community is really the discussion you have to have depending on time like you Keith just mentioned. We are in uncharted territories. I was going to stop talking now it's sort of - this is really the first time policy work within ICANN on such a level is inflected by law.

And it would be great if we actually knew the law but it's a new law so there's so many interpretations of it. So we need I think to know what the law says because if we go back for instance to the contracted parties with something that is undefined by the law it's very hard for us at ICANN org to impose it on them. The legal uncertainty creates one level of this which creates an uncertain for everybody. The more we know the better the work it is. Thank you.

Heather Forrest: Thank you. I have Stephanie, Cherine Chalaby, Keith. Stephanie?

Stephanie Perrin: Stephanie Perrin for the record. And I hate to introduce a note of discord after the funny comments of Paul and Michele but I think we have a lot of concerns. I can only speak for myself because this is not really an NCSG position that I can state. There's a lot of concerns about procedure and process here that we need to note rather carefully. So I'll just go through my points briefly.

Number one not to be a nerd but one of the first data protection commissioners that was appointed was (Stefano Arototoyi). He was the Italian DPA. And in 1996 he commented on registrant data in the wake of the WIPO consultations on that whole subject. So this goes back a long while.

Number two we actually do have some legal certainty because the DPAs have been dealing with their ccTLDs for a number of years. Some have been brought in on consultations some have been acting on complaints. They're not always happy the DPAs with what they see in the ccTLDs but regimes have been set up and so there is some familiarity. And these procedures appear to be working.

So I don't think this is brand-new. And they have indeed been calling for tiered or they also call it layered access since I think about 2003. But I'm not as certain of that date as they are about the (rotota) date. So one of the unfortunate things about the rush we're in and you've heard me nag about

how long we should have been looking at this so I won't go on about that. But one of the unfortunate things is we really don't have time even to gather the facts to do a decent analysis on what of those ccTLD models are working, where the problems have arisen, what the dataflow is, what the relevant data points are, what kind of anonymization or privacy enhancing technology techniques could or should be applied? You know these are things that we could use some research money on and get that work done preferably simultaneously.

In terms of the elements -- I'm on to my next point -- in terms of the simultaneous PD - EPDPs I don't think we have the bandwidth to do that correctly. I was - I've suffered through the RDS where I put many, many, many Michele will say that he yes he had to listen to me at every blessed meeting many hours and we still failed. We need to do an analysis of why we failed, we need to figure out whether that failure is inherent in the multi-stakeholder process or whether we can find a way to arbitrate and stop these failure points. And we probably need some facts to help us out of some of the analysis I would suggest.

So I hate to see the GNSO setting itself up for failure either because we try to do two parallel tracks EPDPs and some of us go away very unhappy and have to take lawsuits under the -- I've threaten this before -- but unfortunately it's a reality if we come up with something that in our view is not compliance with law or in the view of the end users is not compliant with law we will wind up in court anyway and we'll get a lot of legal certainty that way. But it's not the kind of responsible process that ICANN as an accountable organization ought to be pushing us into.

So the contracted parties are responsible for their own liability in terms of how they released data to third parties. That's the language that we use with respect to third-party access. I understand that those folks are equal stakeholders at this table but that doesn't mean they are parties that have an equal right to the data under data protection law.

And we need to keep that in mind. I'm concerned about the illusion of these goals yes we're in a multi-stakeholder environment. That doesn't mean each player has equal rights to say what should happen under a data protection law that provides liability for my colleague here. So I would beg you to slow down. It is not our fault that we're only looking at this now. These are very complex matters and we don't have the facts the data points on the table. Thank you.

Goran Marby: First of all that you agree with me because basically you did by saying that we don't know. When it comes to the GNSO handling it I have no interest. But you point of something else as well is that the contracted parties has an individual responsibility according to the law. For – and you may know this one of the things we have said actually ICANN org legally we'd probably now have a lawsuit against us because we don't have the database.

It will be the one individual contracted parties. And this is one of the other symmetries. So for instance think that they give out information Michele gives out information to law enforcement somewhere and he gets sued for that. That's sort of a – there's symmetry in the situations that we're trying to figure out. And by the way we have looked into when we continue to follow what the CCs doing including the European institutions own .eu.

Yes my name is not Heather Forrest apparently. So and what happened - what had happened over the last six months is that many has ended up very close to what we call the calzone model. It seems to me that model a tiered access model with the same kind of information small divert but many of them ended up in the same place as we did which tells me something.

They're also of course eagerly expecting the next round of this what to collect? Again agree we don't know how to handle a unified access versus an individual access because of the symmetry between the ones who collect the

data, who tells them to collect the data Whois data and the one that wants to use it. That is unforeseen and the law.

Heather Forrest: Thanks Goran. I have Cherine Chalaby, Keith and Chris Disspain?

Cherine Chalaby: I wanted to follow-up on something that Keith has said so if Chris wants to respond to something Stephanie said, go ahead first.

Chris Disspain: Thanks Cherine Chalaby. I just wanted to draw a distinction. I think I may have misheard but I think referring to the guidance in respect to the fact that DPAs have been talking to ccTLDs is true except for the - and it would be helpful if that guidance was the same for each ccTLD.

And each ccTLD in Europe ended up doing things the same way but quite demonstrably that is not the case and therefore there is a severe lack of guidance. I also wanted to say that as somebody who ran a ccTLD and understands about access to Whois that it is much easier to create a workable policy within a border than it is to create a workable policy across borders. And I think it's important to remember that. So ccTLDs are useful to look at but I mean to a very small degree. Thank you.

Heather Forrest: Thanks Chris. Cherine Chalaby?

Cherine Chalaby: So Keith I was quite encouraged by what you said in terms of this week you'll be working on the scoping and chartering and deciding whether it's one or two PDPs and so on. Regarding the access model from what I hear very clearly from Goran is should take this is a two-step approach. The step one is to get the legal foundation, i.e., get clarity from the DPAs whether it is possible or not to have one. But let's assume you would I mean it's - I don't know what the percentages are but so you have to build the scenario of assuming it would and assuming it probably was somewhere towards the end of the summer that kind of timeframe.

So it is at that point in time what do you do? And whether there would be sufficient time to incorporate it into the current EPDP or create another one so you need to leave the flexibility. As Goran said it's almost impossible to know exactly what we will get and when we will get but I think you'll have to build some scenario planning around that kind of two-step approach. Thank you.

Heather Forrest: Thank you Cherine Chalaby. I have Keith and we have five minutes remaining in our session. Keith?

Keith Drazek: Okay thank you Heather Forrest. I'll be quick then because we probably should talk about the picket fence, so just a couple of observations. One two words that I think we've all acknowledged two challenges is complexity and uncertainty okay? And that's particularly true around the discussions around a uniform access model. So we've got temp spec on one hand that is fairly concise and tight and something that we need to address within the next 11 months.

And then we've got the - all the questions the open questions around access, accreditation, tiered access, layered access, uniform access whatever we want to call it. So I think we're all very much on the same page there in terms of understanding the challenges.

The one thing that I'll follow-up with is that there has also been a lot of conversation around this table about various inputs for lack of a better word. In other words Goran the document that ICANN org has just posted it should trigger conversations and feedback from the DPAs. I think it's going to be an exceedingly helpful input to the policy development process that will be run by the GNSO.

I think Stephanie to your point the other things that are out there that we know about including some of the ccTLD behavior, and approaches and engagement another very critical input to the policy development work. The

accreditation and access model that the IPC and the BC have been working on for several months another very, very important input to this conversation. There's a few others that have just recently been circulated as well more important inputs. But at the end of the day all of these have to be considered by the GNSO through its PDP working group or an EPDP working group to make sure that what comes out the other end can be a consensus policy and enforced because if something is decided upon outside of that it doesn't stand up, it doesn't – it is not supported by the multi-stakeholder bottom-up consensus model. Thank you.

Goran Marby: Unfortunately I have to leave in a couple of minutes before the picket fence discussion. Sorry about that.

Man: That's okay.

Goran Marby: But Chris knows much more and Becky Burr knows much more about that anyway but I have a wish and an ask and I know that not everybody thinks we should have a unified access model. I think there are - not everybody thinks that what we're doing now is the appropriate way of going forward. Keith said it we're actually in a moment in time when the - some of the foundations of the multi-stakeholder model is (contested).

Can we survive a surrounding where legal implications have an effect on what we do? I think we can survive that. I'm totally convinced that we can survive that but we have to work together.

And one thing we have to unify ourselves in I think is also that we have to work. And I'm not saying the GAC because this always gets misunderstood but the member state of Europe will have a very important role in this and the European Commission and the DPAs.

If we were able to make this happen it's going to be something that we have to work with a member state, European Commission and the DPAs. And that

is the responsibility I think for all of us not only me because I'm just me. And to find a way where we can have a communication with them open and transparent but also having a communication where we maybe can together come up with things we can talk to them about.

I'm pleading that we can reach -- and I don't want to use the word consensus or rough consensus or anything else -- but we really can have a discussion where we can think about things not only from our own agendas but also with the perspective of the multi-stakeholder model and ICANN as an institution regardless of the reasons why you're here. Thank you.

Heather Forrest: Thanks very much Goran and thanks very much for being with us. I'm mindful of time but Chris you may have comments on point three that you want to raise?

Chris Disspain: Only just to say that I'm mindful of the fact that the response we gave you in the note that we sent you yesterday was effectively the same response that we gave you when we talked about it the other – the last time which was what we're happy to talk to you about it but what do you do in normal circumstances when you're faced with this issue with a normal PDP?

And I'm not clear what it is you're looking for from us. But that said happy to have a conversation with you about it and figure out what to do but looking at your question my sort of immediate response is but you guys must have dealt with us before where there's a conflict where something is inside or outside what do you normally do so unless I misunderstood.

Heather Forrest: Thanks Chris. I'll take a stab here -- and I know others may have a more articulate way of saying this -- but as you've said a number of times and so I find your answer a little bit surprising in the sense of you've said a number of times we're in uncharted waters. This is the first time that the board has given, you know, put the council in this position that we need to respond.

And given that that's the case and everything in the temporary spec is something that we have to respond to I think that's what's enlightening the questions in regard to the proposed unified access model is, is it part of the temp spec, is it something other than the temp spec because we have a sense of what's in the temp spec we need to respond to in the form of reviewing.

And reviewing for the precise purpose of determining whether or not it can become consensus policy so what's in and what's out to us has a pretty significant impact.

Chris Disspain: So can I just respond to that because I do understand. The point is not – it's not that we're not in uncharted territory we are in respect to an EPDP. But my question is surely in previous PDPs (unintelligible) PDP isn't particularly relevant or surely in previous PDPs you've been faced with the question on whether something is within or without or am I - is that just an assumption that I'm making that's incorrect? Becky Burr?

Heather Forrest: So I'll turn to others. I have Pam, Becky Burr and Michele.

Becky Burr: Well one of the interesting things is about by using the EPDP you miss that step of having the general council opine on what is on – in the big events and what is not.

Chris Disspain: So you would normally rely on that - in that process. Is that basically right?

Heather Forrest: Thanks very much. I mean this step isn't entirely missed in that here that the general council is specifically called upon to ask is this within scope of a EPDP? But you're correct to say that, that broader picket fence discussion is not as explicit here. Thanks Becky Burr. Pam?

Pam Little: Thank you Pam Little from the Registrar Stakeholder Group. This is really in response to Chris's comment about the question has been addressed in our

previous discussion between the board and council and also in the letter from the board to the council, the previous letter. I think that previous letter actually was addressing or trying to address a different question.

The question was about there were certain elements or aspects of the temp spec that looked like or appeared to be outside of the current contractual obligation in the registry agreement or registrar accreditation agreement. How do we deal with that it seemed to be additional contractual requirements? That is a different question to the PDP - sorry picket fence question. Thanks.

Chris Disspain: Perhaps we could take it away and have another bash at giving you an answer based on this discussion.

Heather Forrest: Thanks Pam. Michele?

Michele Neylon: Yes thanks. That was loud. Michele for the record. Chris I suppose your question is a perfectly valid one. And but I suppose since we're – since we keep on saying this the situation we've ended up when - in is not normal. Under normal circumstances when somebody brings an issue via stakeholder group, it comes to council, council discusses it, reaches a certain point then we say yes we can kick off a policy development process on this or we can kick off some kind of process to revise an existing policy, et cetera, et cetera, et cetera.

So we're able to have a discussion, and the scoping, and drawing the lines around that straight up whereas in this instance we had a - I mean I'll screw it I'll just be blunt about it. We've had a document dumped on us with a ton of stuff in there without us having the ability to actually say well hold on a second this isn't policy, this is policy, this is operational this isn't. We never had the opportunity to go through that.

So taking one particular example there's an entire section in that document around SLAs, SLAs for technologies that have never been used by people -

by the people here within this space. And even those who have used those technologies have not done so at scale.

So expecting us to accept levels of SLAs for completely untested technologies at scale is very much operational and it's something that we would have if there was a policy around you need to use this technology the SLA part of it is something that would definitely have been negotiated at - when you went to an implementation. Does that help you a little bit to understand where we're coming from?

Now I'm not the person who can help kind of navigate the entire here is this clear line around this infamous picket fence. But I had somebody ask me about this the other day and I ended up with my tongue kind of wrapped around on the back of my tonsils and it really hurt.

But in terms of how we got here, you know, the fact that this temp spec was just kind of thrown at us and kind of go here run with this now operationalize it. If you look at the way that we within the industry those of us who have to actually run our businesses have tried to implement it it's a bit of a mess at the moment. Thanks.

Chris Disspain: Yes can I respond to Michele? Okay so I'm going to make a suggestion to getting this sorted out because if we bounced letters back and forth between us it's not going to be particularly helpful. So if you want to nominated person to talk to us about it I'll nominate Becky Burr as our person to talk to about it and probably David Olive as the staff person.

I suggest the three of you get together and work out what the answer to the question is and what we can do to help and then that way we'll save a lot of time and effort. So over to you to nominate someone and we'll go from there. Thanks.

Heather Forrest: Thanks Chris that's helpful. And I think that will feed very nicely into the process that we have underway in any event as part of the chartering exercise to seek input from general council.

So that – those efforts will be nicely dovetailed. We're just over time. Any further questions for our colleagues from the board? Board colleagues any further questions from us or for us rather? Michele?

Michele Neylon: Yes thanks again. Michele for the record being a pain in the ass. The temporary specification is it has to be re-upped re-whatever I don't know what the exact term is throughout the course of this 12 month period or the 360 days to be precise.

While we are trying to initiate scope initiate staff everything else this PDP or this EPDP the board has the ability to make changes to the temporary specification. So the first thing is obviously we don't want you to be making too many changes to it because that would potentially blowup the EPDP. And secondly just the ask that I would make is if you are considering contemplating making changes that you please keep us in the loop because otherwise we could end up in the ridiculous situation where we spend hours, weeks, and days or whatever working away on something to then discover that's completely mute. Thanks.

Cherine Chalaby: I'll respond to that. We're not going to do anything and surprise you with it. And secondly our intent is to also appoint one or two liaisons to work very closely with you. They will provide a two-way communication one from you to us to tell us what progress is going on and if you want any input from the board at any time we will then convene and provide comment back to you very quickly because we know the difficulty and the time constraint that exist. So rest assured it will be an open communication between us and we're - I'm not going to surprise you.

I just wanted to say something in closing if that's okay. I think it - this is a very good discussion. It's very hard to be definitive about every point. But I know that you guys are I think from 5 o'clock this afternoon and all of tomorrow you'll be working on the chartering and scoping.

So we will follow your progress and we stand ready to help you as much as you want if you want and have a further discussion so that's for sure. And the suggestion that was mentioned earlier we will take it and implement that. Okay thank you.

Heather Forrest: Thank you Cherine Chalaby, thank you board colleagues very much for your time today. Council we can take a very short break to transition to our next section session which is discussion of motions on the agenda for Wednesday. So we'll continue very shortly. We'll end the recording for the session and transition. Thank you.

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