

**ICANN Transcription – Abu Dhabi
GNSO- Contracted Party House (CPH) & Commercial Stakeholder Group (CSG)
Meeting
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On page: <https://gnso.icann.org/en/group-activities/calendar>

Graeme Bunton: Good morning, everybody.

So this is Graeme from Tucows and Chair of the Registrar Stakeholder Group.

Are we good to - everything is going at the back of the room? We're good?

I think we've got a quorum here and we can get going. I took the initiative to start this off. But if someone else feels like running this shift, I'm not sure who's (unintelligible) or who's in charge here this morning. So we'll do this nice and collectively, I think.

So thank you, CSG colleagues, for joining us, the CPH, this morning. I'm not sure where the agenda came from. But we can certainly talk about those things and I think have some reasonable discussions. So we can dive into these things or if you guys want to - anyone from the CSG or from the other

side of the house for the CPH one add anything, we can dig in or add anything on the fly because this - I think this is - these sessions are just good for making sure we're on the same page on issues and that we're communicating effectively and if there's anything we need to dig in, you know, further outside of this sort of broader sessions and make sure that we have consensus or agreement or at least understanding your position. So we can feel free to dig into that. Anybody have anything else to add?

Andrew Mack: I just hurt my voice. There's a long (unintelligible). Just to say that I think we share very much the same desire to understand what's going on in your heads and (unintelligible) to understand where you see the future coming down the next - a lot of changes in the next 12 months potentially. And so we'd like to get your thoughts on what that's going to look like. And I'm really sorry about my voice.

Steve DelBianco: I guess I'm going to have to pinch shift for Andy here today. Graeme, the IPC and the BC roughly two months ago fired a letter and saying that there need to be computing involved in and the way that ICANN prepares for the GDPR and its adjustments to it. We've also suggested that ICANN take a perspective of how can we balance and preserve as opposed to asking law firms to just give opinions on what the GDPR in the current list.

We also read with interest the contract parties letter to your end which was extremely urgent. I mean, you guys sounded the alarm, you know, in 60 days, we need to have an immediate joint work between the registries, registrars and ICANN to come up with something. We would have loved to see a more open invitation to other stakeholders there but we'll show up anyway without the invitation. And so I can quickly give you a report on what - how it's gone in terms of the BC's request and the IPC's request and then ask you what you've heard back and then we can look for a plan, a way forward. Will that make sense? Okay.

So for the IPC and BC, we got squat. Nothing. The task force was convened to Johannesburg to look at use cases, right? Use cases for WHOIS, whoever use this could have been a task force that helps to devise the letters that went out to the DPAs in mid-September. But the task force was dissolved and its basic function was to consolidate a bunch of use cases into a table that got stable to the back of 29 form letters that never asked the DPAs to do anything.

So that left us unsatisfied and the letters themselves certainly told the story of ICANN's long history with WHOIS and who ICANN is but didn't make an ask. It didn't ask the DPAs to consider a way forward.

So that's one of the reasons we asked for a session on GDPR and WHOIS. It's going to happen tomorrow at 10:30. And we invited registry and registrar. So Nick Wenban-Smith and Kevin Kreuser. Is that how Kevin says his last name? Kreuser. Kevin Kreuser, Susan Kawaguchi beyond there from the BC. We have (Lorrie Capen) from the Federal Trade Commission. Ralph Sauer will be remote from the European Commission. Goran will be on the panel representing management. Becky Burr with the ICANN Board. So it's pretty rounded out group. And we also have Stephanie Perrin from the NCUC.

So that group will be at 10:30 tomorrow and it'll be fascinating to see what happens between them and the audience. But we felt wholly unsatisfied with the level of effort to push that matrix into someplace where the matrix of legitimate uses might - how does that match up with legitimate uses that were articulated in the GDPR and nobody sort of answered that yet. And we looked at the Hamilton memo, right? We've looked at the Wilson Sonsini memo and the IPC has just got a memo of its own and all of them seem to be structured in terms of just that's the way things are as opposed to asking a lawyer, especially the expensive ones, tell me how I can do this. And that question seems not to have been asked yet and maybe that's the opening we have.

So with that, I'd love to hear what the contract parties feel has been the response so far from ICANN to your stern letter of two weeks ago.

Sue Schuler: Please for housekeeping please announce your name before you speak. That was Steve DelBianco for the record.

Graeme Bunton: Thank you, Steve. This is Graeme. I'll jump in there, though. Everyone else? Paul, whoever else, feel free.

Right. So the CPH wrote request a long time ago that we get some level analysis done and we frankly don't have that back yet and that's been - when did we submit that? March. And so you're right that that most recent letter was sounding the alarm. It is - we are alarmed at the lack of the input we have. And many -- I can speak mostly for registrars -- do a lot of this as a contractual compliance. And there are certainly other issues beyond that. But for us, that fundamental first thing we need to figure out is how GDPR is going to impact our contracts and we have zero clarity from ICANN back on that. And that's deeply problematic for us. And so we are ringing that bell, I think, as loud and as hard as we can.

And in some sense it's almost too late for many of my members, anyway. People are writing code. They have engineers in dark, stinky rooms already building solutions to the GDPR without, you know, any sort of broader look at this from ICANN or any sense of what's going to happen with our contracts. And that's problematic. So trains are leaving stations, you know, as we're sitting here talking.

Steve DelBianco: You might imagine the trains are going to be on different sized tracks, arriving and going in different places in different times which is inefficient for you but especially inefficient for the users of WHOIS. So ideally, we find a way to maybe standardize that approach.

Paul Diaz: Yes, Paul Diaz for the record. Agree on standardized approach, that's the desire. One of the reasons we used the language we did on our letters with sense of urgency is because we've been asked this and ICANN since, as Graeme noted, significantly since May and we don't feel we've made any material progress. So we share the frustrations from our stakeholder group colleagues and not getting clear guidance, answers, et cetera, from ICANN. And we do - we are at significant risk as a community. We have contracted parties, registrars and registries for that matter. We have to start work on implementation plans as we see it and the talk and the response that we're getting from the community and from ICANN Org, whenever it comes in, we're at real risk that we may not sync up.

So, you know, trains are leaving on different tracks and you could have a big mash up at some point down the road, hence, the sense of urgency. Staff says they hear it. But that's what they've been saying all along and we've not really seen any material move push forward. I think your panel tomorrow is a terrific panel in terms of the breadth of perspective that it brings. But, you know, it's almost coming too late for any sort of material guidance that it can provide for those of us that need to implement because, as Graeme says we have our contractual obligations as ICANN contracted parties to follow European law.

And as it's been joked, I think we would rather avoid European fines and run the risk of an ICANN jail than the other way around. So there's a genuine sense of urgency and frustration. I'm not really sure where this is all going to take us.

Graeme Bunton: This is Graeme for the transcript. I am organically running a queue. So I think I've got Michele and then Stephane and then if people want to wave their hands at me, I'm trying to pay attention in Adobe, get in there too.

Michele Neylon: Thanks, Graeme. Michele for the record. Whatever goes into letters and all that at this juncture is totally (mush). It's absolutely (mush). It doesn't matter.

The issue for us I think as contracted parties is, with all due respect, we really don't care at this juncture what communities want or need. It's really down to what the hell ICANN Corporate is going to do around compliance.

Now, you may not like that answer. You can totally understand where we're coming from. In the last couple of weeks, we've seen a situation which I think in some respects, you know, registry operator took one for the team. They threw themselves on a sword. It was - they've set themselves up as a sacrificial lamb. And we now have a degree of clarity coming from a DPA that we did not have previously. The DPA in question was the Dutch DPA made it very, very clear in their response that they were only doing what they were doing in terms of actually writing about this and because they felt they have to - that they have no choice but it wouldn't be something that they're doing in the future.

So from our perspective, you know, they said, you know, "We've been asking the ICANN CEO and board, you know, what do they intend to do around compliance." We can talk about updates to policies and all that kind of thing. That's a lovely, charming idea. But in terms of timelines, it's completely out of sync.

Come the end of May next year, we are all going to have to make changes. And if we can't - if ICANN doesn't give us some level of guidance around what they will accept, then we're going to have to take whatever actions we deem necessary to protect our businesses.

Now for the registries and registrars who has a part of their business in Europe, they might come up with something. I don't know. For those of us who are essentially European, I can assure we will be doing things. It'll be pretty damn clear.

Stephane Van Gelder: Thanks, Graeme. Thanks, Steve. Stephane Van Gelder,
Registries Stakeholder Group, Vice Chair of Policy.

Just to try and be as specific as Michele has been, there is - there are two case studies that everyone should be looking at because they - as you have said, Michele, they've already been obliged to take extreme action, extreme in terms of their contract with ICANN. That's Amsterdam, FRL.

So for the attention and information of people in the CSG, it may be worthwhile looking at those, if you haven't yet. And in general, very clearly, the situation here is one that we've never - this community probably has never faced quite in this way before. We had a meeting with the board yesterday and Goran said to us not only that we should have seen this coming, which I thought was a bit strange, but also that this would probably not be the first time that national or international law would take precedence over ICANN contractual obligations which really is, I think, falling short of the type of answer you're looking for as a contracted party from the other person that's holding the pen on your contract.

So that's the situation we find ourselves in. I do think this is a community-wide problem. And it's up to the community to rally around and either continue to put pressure on ICANN to try and find a solution or support the people that have to, for legal reasons, find a solution in a very short time frame now. So I think it's great that we can have these cross-community dialogs and we can pinpoint the operational problems that we're having and bring those to your attention and hopefully we can all advance together on these issues.

Steve DelBianco: Thanks, Stephane. Steve DelBianco. In a moment, Alex Deacon of the CSG will give a reaction to the Amsterdam and FRL, the forms that are request-driven information has to fill out. And that'll be an interesting dialog. And I don't think the Dutch comment along GDPR was really on existing privacy law, not GDPR. So I don't think it really gets us that definitive step as to what next May is going to look like. I'll let you and Alex discuss that for a moment.

And I've heard the CEO embraced this distinction between all that he worries about is compliance. It's you, us, the community that worry about policy. What is the policy? The policy is probably the replacement for what we have today which is the RDS PDP Working Group. Susan, you should please join us at the table. Susan Kawaguchi is one of the participants there. And she'll be on the panel tomorrow as well.

But, Paul, the engineers in stinky rooms, one of those programmers and spend a lot of stinky time in stinky rooms and my guess is they're all writing if statements that if the registrar was a European legal person, display this in data which seems relatively trivial and some message to indicate what you'd get.

But I know you have Court 43 or other access issues. And I guess it's not just the display but it's the transfer from a registrar to a, I think, registry. And that transfer is not much different than in display across statements. So I get that both of those are going to need some programming.

And my question for you guys will be, are you coordinating with each other, taking matters into the CPH's hands as opposed to each going your own way? I mean, why not standardize on the wits of the tracks and the type of the trains? It only serves your interest to do that. Get a reply maybe?

Michele Neylon: Thanks, Steve. Michele for the record. You're being logical and rational. And I would love to see, you know, logical and rational approach being adopted by everybody.

Is the coordination between the contracted parties? Yes. We have a joint group of interested parties from both registries and registrars where we are examining, discussing, et cetera, et cetera, et cetera, all of those.

Now whether we will be able to reach agreements in such a form that on some aspects of this or not, it's not clear because there's lawyers around.

You know what they're like. They love talking and talking because they bill by the minute and they always talk about things like, well, you know, you need to get your own advice for your own business and make decisions based on, you know...

Stephane Van Gelder: (Unintelligible).

Michele Neylon: Yes, yes, more lying, right. So - yes, I'm fully aware. Thank you, Stephane. It's nice to see you have your coffee and you're wide awake.

No. But, I mean, you know, the thing is this, they're trying to get them to kind of coalesce around something. It's not being held by this kind of wishy-washy it's my problem, it's not my problem, I don't know if we're a data controller or kind of stuff we're getting from ICANN Corporate. If they were being a little bit clearer I think in terms of what their exact position was as opposed to we're exploring it type thing, it might help concentrate mind. I'm not sure if they're saying to us "Give us your proposed solution" or "Help us ask questions," I don't know. I mean, maybe Graeme or somebody has a slightly different view.

But my kind of take on it is we - I'm speaking personally. I'm not speaking on behalf of anybody else. If we end up in a situation where there's as many implementations as there were registrars and registries, it's going to cause massive operational issues for us because in terms of how we do our business, like my staff's ability to look at a domain name and work at will know it's not our problem, the damn thing. It's working. Go talk to somebody else, which happens.

Graeme Bunton: Thanks, Michele. If I can jump in briefly on that. This is Graeme for the transcript. I think the point that Michele was just making about if we have more clarity on what ICANN's stance was, then the response from registrars anyway would - could be a little bit more coherent. I would say that that was maybe a optimistic description of at least registrar's ability at the moment to

coordinate and work together. There is some of that happening. I'm hearing some people beginning to talk and share a little bit about how they're planning on implementing GDPR. But there is no room where we're going in there and fully talking about or being totally transparent about how people are doing it because no one is sure yet. We don't know what the response from ICANN is going to be on our contracts. And probably someone else in the room can speak more to this than I can. But I'd be yet to see sort of full and really open communication about what the solutions are going to look like because I think businesses are building different ones right now and that is not ideal.

Steve DelBianco: And, Graeme, as a follow-up, Steve DelBianco, let's not expect clear and discrete response because ICANN has to - have its own lawyers to decide things. And let's not be that concerned as to whether they are a data controller or not because probably all of you on the CPA will also be data controllers. So it doesn't really do much good to know that yes, ICANN, you're a data controller, too.

And why don't we just assume that they're going to adjust to compliance and will spend the next couple of months figuring out are they going to adjust their enforcement of the RAA our way. We'll figure that out when they tell us how they're going to adjust it but we have a roadmap in the sense of the conflicts with national privacy laws. We get some sense as to which things are not enforced for what kind of entities and access and transfer.

So understand the assumption that they'll figure out and adjust to clients, well, it doesn't change anything about your plans. You still need to generate some code that you're fairly confident will be compliant. And it isn't ICANN who'll ever tell you. Yes, that code looks compliant. That's going to require you consolidating your resources and you need to use your own coder but you might consolidate your legal resources to seek some sort of opinion from some DPA to say that it looks like that'll be compliant. And that should give you the confidence to proceed with all that it would call that as an interim

model while you and us and the community design an RDS schema for 2019 or so, whenever it gets completed, and the interim is where this new standard would live. And that's short of a logical engineer's perspective on how we have to lay out the next year and a half.

Man: Thanks, Steve. Just a couple of things. First off, DPAs don't work that way. This is something we've heard time and time again where this is assumption that DPAs are going to act to that advisory capacity like that. They don't. For a DPA to issue an advisory letter and notification, it's usually when they're looking at something in terms of an industry-wide issue, so IOT for example or, I don't know, location services on mobile phones. There's a bunch of those kind of things where they kind of go right. We've all talked about this. This is what needs to happen exactly.

So if anybody (unintelligible) to happen, forget it. We, as registrars and registries, we've been getting some assistance from the guys of ECO and Thomas Rickert to kind of help to explain to us in terms that we can all understand better specific to the kind of businesses we're in and that's been helpful.

You did touch on one topic that's been close to my heart for some time which is the conflicts of national law. And as you may be aware, that's kind of been circling around the drain a little and it's back on the table up the GNSO Council. So, yes, as a discussion piece for the end - very end of the agenda and we are going to allocate a maximum of about three minutes to it and hopefully it won't go off the edge. Sorry, it's been known as the agenda killer. So, you know, we're working on these things.

John Berard: This is John Berard with the BC. So the Irish Data Protection Office staffing up but it still remains a fairly small operation. With Facebook being based in the - or using Ireland and the data protection office there as its point of contact, how much time and attention can you get at the Irish Data Protection Office?

Michele Neylon: Thanks, John. Michele for the record. Have you ever tangled with me? I'm pretty good at getting a bit of attention when I want to. No, I mean, the - it's a very valid point. I mean, a few years ago, the Irish Data Protection Authority was based off a tiny office over a small supermarket in the middle of nowhere in the part of Ireland that most Irish citizens have never gone to unless their car broke down, bus driving through it. And they've upped their staff count significantly. The budget, which was for Ireland, came out about, what, three weeks ago and they have another several million to the office.

My understanding is that between the various court cases involving Facebook and a couple of other very, very large Internet companies that that is taking up a lot of their time. But at the same time, I'm personally talking to our rep who's been able to give me some contacts. We have been able to get to people on the phone in the past.

Graeme Bunton: Hi. Alex...

Alex Deacon: Hi. Alex Deacon from the Motion Picture Association of America. Just before I jump in here, this is not a - the statement I'm going to make is not an IPC statement. It's an MPAA statement.

But I want to try to put a positive spin on the GDPR. I know it may sound crazy. But my hallway conversations this week have been encouraging. Looking at what Amsterdam has done, their approach, I think, to me, was encouraging. It's not perfect but it's a start.

And to me, there seems to be a path forward here. One that's built on, I think, at least four principles: A path that uses a gate; a path that assumes that keys to the gate exist based on some purpose and to those with a legitimate interest; one where access to those keys will require some type of framework, TDB, some accreditation, if you will; and then one where

receipt of data through that gate comes with obligations to handle and process the data according to the regulations and so on.

So it seems to me that kind of - those high level of purposes we should, as a community, be able to come up with, you know, flush out those details and have something more concrete kind of to use when we are talking with DPAs instead of asking them vague questions about, you know, vague concepts, we could say. This is how we think the process will be solved or the problem will be solved and we can get more concrete and useful input from them. Again, this may be overly optimistic but I think - I see a light here. There's a path that I think we could walk down. Thanks.

Patrick Charnley: So Patrick Charnley from IFPI representing the recording industry, IPC member. First, I'd echo those comments on behalf of the recording industry.

And then in terms of how to move towards a solution, to pick up on Michele in terms of DPAs and opinions and that type of thing, I thought it was interesting in the GAC conversation and GDPR yesterday when the European Commission talked about tools available under the GDPR.

And one of those is the procedure under Article 36 in terms of high risk processing. And one of those is the procedure under Article 14 in terms of codes of conduct. And we will be in the position when the GDPR comes in. But the (unintelligible) will, by statute, be in the position to issue binding opinions.

Sorry, that's not quite right. And another layer of that is that I understand that Article 29, which is the existing European body, some of its opinions will be adopted by the European Data Protection Board when it comes in May which addresses the issue of the (unintelligible) that Goran talked about yesterday. So there may be a possibility. If we're going to Article 29 before May with either an interim or a final proposal for how to deal with issues that arise, then

having that opinion adopted by the board which, therefore, ensures that everything is in time.

So I think that that's just one thing to consider and it's obviously something that the European Commission was encouraging when they talked about the tools available under the GDPR. So something, I think, to have in mind as a route forward. Thank you.

Graeme Bunton: I think Becky is next.

Becky Burr: So just from that point, Becky Burr for the record, always for the record, just on that point, I just want to pass along some anecdotal information. I think the only thing that we could get from the working party, the Article 29 working party is some informal socialization of solution which may or may not be a good thing, depending on where you are. And the one thing I will pass along anecdotally is when we were in Hong Kong, (Teresa) and I met with the deputy at the Dutch Data Protection Authority who's really the serious experts in that office.

And what he said was the data protection commissioners really don't know how to sort of do this collective decision making outside of the advisory context and they're still learning to talk to each other. So I think it's an interesting idea but I wouldn't get too - I wouldn't place too many eggs in that basket.

Man: And, you know, just briefly on that, I think it's an area that, you know, (unintelligible) brought further absolutely not suggesting that everybody should pursue this route. It's just one thing to put into the mix, I think.

Steve DelBianco: Steve DelBianco with the BC. We're at 35 minutes. We have 90. We have three topics. But this has significant magnitude. So perhaps another ten minutes on GDPR? You're good with that?

Graeme Bunton: I mean, we can - probably we should touch on those other two. But generally, actually I'd like to do GDPR last in line because I know it's going to fill the rest of the time. We can spend more than that. This is important and because there's still small conversation behind, so.

Steve DelBianco: Until the queue runs out then, right? So let's be as articulate as we can about understanding the different players in the landscape and the limitations of certainty. There will not be a lot of certainty. And I've heard that said multiple times around the table. Your coders can code stuff that certainly works but they won't have certainty that it will be compliant. They're not going to get some letter of ironclad compliance. They'll be taking certain risks in terms of coding it. They'll probably make them more conservative than aggressive. It would be outstanding if their contract parties coordinate to the extent where you save yourselves some time and trouble and economize on your legal work and your design work. But us, as the user community for WHOIS, we're not the only ones, of course, but as the user community for the data itself, it would certainly be beneficial for us if there was something approaching as standardized approach, a standardized gate, as Alex Deacon indicated, or a standardized approach for getting access so that thick data in cases where the thin data isn't enough to pursue the investigations that we need to do.

Law enforcement may have a very similar statement for you. It'll just take several months and several volumes of paper to say it. So we have to take things into your own hands. We can assume that ICANN compliance is studying what kind of adjustments they'll do on enforcement and hopefully Goran will talk a little bit about that tomorrow on the panel. That's one of the reasons we were glad that Goran is on the panel and they will be no shortage of talking. The question will be whether it will be the kind of specificity that we can be actionable for.

At the same time, I think the legal memo itself from Hamilton which ICANN is asked for is the most immediate opportunity for us to seek, maybe not obtain but to seek, more clarity. The invitation for management was that for the next

couple of weeks, Goran's term, that e-mail address, gdpr@icann, will take e-mailed questions that they would consolidate and deduplicate and then send them over to Hamilton for the next phase, the second phase of Hamilton's analysis. If somebody has a different understanding, correct me on that.

But that's an opportunity not to flood that e-mail box until it blows up but to ask the kind of questions that are answerable, that are actionable. Questions like, tell me how, if and how we can use legitimate uses or public interest or code of conduct to create a regime whereby we can have access. And those answers, if they come back, will give you greater confidence about what you're coding right now, right? But it's also going to feed into what Susan and the RDS PDP working group are doing because they are designing the community-based policy that will then replace whatever this interim adjusted compliance world is somewhere in the next year to year and a half.

Graeme Bunton: Thanks, Steve. This is Graeme for the transcript and I'll get to Michele in a sec. I just - a small point to make and I've said this before in other context but it's sometimes easy to forget that there's this - at least for registrars, there is a diversity of business models and we are competitors on a day-to-day basis on ratings and margins. And so when it comes time for us to get together and collaborate and standardize and share stuff, frankly, we suck at it. We try. And we work to get better at that, in, you know, technical term. But it's not something that comes natural to us and it's not natural in our insight or stakeholder group.

And so when issues like this arise, there is, you know, friction there. And so we're trying to work collectively to remove some of that and find the places where we can share information and standardize and get those tracked the same way that it is clunky for us and certainly when the timelines are short, it makes it even more difficult.

Michele Neylon: Thanks. Michele for record again. A couple of things. When the issue around compliance, I think your understanding of how compliance is kind of

interacting with us might be more optimistic than what we're getting from them. So as compliance normally holds an open session for anybody and everybody at some point towards the ICANN meetings and then there were closed sessions for registrars and registries separately or together or slice and dice and we had a meeting with them this morning and we're kind of like "Okay, so you want me to sign something saying that I'm going to be fulfilling all my contractual obligations and meeting me up." I said, "Well, okay, how's that going to work when I know damn well that I am going to breach my contract?"

And, you know, all these compliance people kind of little heads going together, "Oh geez, what now, what now?" I think "Well, you know, come on, you know what I'm talking about." And they might suspend that into - I got the best (unintelligible). I'm sitting there going, "I am going to breach my contract, expecting hellfire and brimstone to come down on my head," and I got back something about, "No, no, no, the compliance thing is actually for the previous year." I'm kind of like "Okay. You know, this was not the end game in my question. The question was, how are you guys going to deal with us when we are trying to work through this? You know, are you going to be collaborative with us or are you going to be there smacking us over the hand with a 12-inch ruler?" I mean, I think, Steve, you're old enough to remember when that was common. I mean, so do I. It was great.

Exactly. So, you know, that - you know, we asked yesterday in the meeting with the board. I think Becky might be able to speak to that as well. We asked about, you know, how they're going to handle the compliance side of things. And, you know, the - if we're end of situation where we're all getting compliance notices like what's happening with Amsterdam, that's not productive. If we end up in a situation where we're getting into a protracted negotiations with ICANN legal and Jones Day, that becomes a very, very expensive process.

So these are the kind of things I'm looking at. I mean, I would personally be much more comfortable if somebody were to say, "Right, we're not going to get this fixed by the end of May. We need to - we're going to - have to work with - let's have some kind of reasonable timelines that might work. In the interim, the following sections of the RAA we are not going to go down the enforcement action with this. We'll send you notices or something." And when you say, "Well, this is why," or whatever and we can move this forward. I know you guys are going to hate that. But, I mean, you have to understand at the same time. If ICANN's answer to GDPR is to terminate my contract, then I think that's a bit of a favor.

Graeme Bunton: Thanks, Michele. I got Susan in the queue.

Susan Kawaguchi: Susan Kawaguchi for the record. And, Michele, we actually asked that question specifically because I think that the CSG or the BC at the very least understands that in the interim, you know, you're going to have to violate some of the rules with the RAA. That's just - I mean, how else could you look at that?

So the question we asked yesterday was, is there any specific mechanism that ICANN is considering to relapse the contractual compliance stature in the face of GDPR? And then followed on with, you know, are you going to suspend the full current policy or pieces of it? And didn't get much of a response from (Gordon) but, you know, the only thing he did say is we know that we can't enforce compliance of the current rules at 100% because that's where we are now for the WHOIS and we know it's not going to be zero. So I've tried to, you know, get in to say, you know, "So what are we looking at, 50%, 10%, 25%?" You know, he wouldn't go there which I understand. But his message was, "Well, the community has to tell us that." You know, we can't. Yes. And so, you know, they - ICANN has to set that for the play.

And so the other point I just wanted to make, I do think as part of the RDS working group leadership, Michele and I both on that, that, you know, we

need to really dig down and compromise and come to the table ready to just say, "Look, we all have our entrenched areas that we can't live with but that position has to go away. We have to compromise. We have to understand." And I think we've sort of started that in the last few weeks with now looking at purpose again, you know, and hope, yes, you know. But, you know, there's got - the community has to come together on this and figure out where - what the final solution is to this because no one is going to like the interim solution.

Steve DelBianco: Graeme, it's Steve DelBianco. One small follow-on. That's the secret to compromise. If the interim solution is unsatisfactory to privacy advocates, law enforcement, business community, registrars and registries, well then you have the critical ingredients of compromise in the RDS PDP because everyone will want to replace the interim with something the community believes is the best policy.

Graeme Bunton: Thanks, Steve. So we'll code something terrible. And then we'll find, you know, some light out of that. I think Becky is in the queue.

Becky Burr: So I want to be clear I am not speaking for the board. Compliance is not a board function. I'm just going to tell you - I mean, they try and translate Goran a little bit which is probably also dangerous and something I'm not authorized to do but as you all know, I do many things I'm not authorized to do.

I think it's clear that the - that compliance with the WHOIS specification in the contract is not sustainable as we approach May. And I think we need a path to get there. And I think also it's completely clear that no matter what we do, we will not have a solution that will be completely acceptable for data protection authority by the end of May because we will not have in place any sensible way to determine whether somebody is indeed a rights holder accessing data for a particular purpose, all of those things. So yes, this is iterative.

So the question is, how do you iterate while giving the contracted parties the kind of assurances that they need to do their business and - but also not sort of completely advocating enforcement at all because - so when Goran says it's not going to be 100%, it's not going to be 0%, I think that we could see that there are a million different ways in which you could be compliant.

There are also a million different ways in which you could be compliant like over the top and do things that are not required. It would be really nice to have some basic guidance. And I think that's what ICANN is trying to do is to put out a model that says "If you do this, we're going to leave you alone. And if you do something different, we're going to have to look at it on a case by case basis." But there's a problem and Goran alluded to this but he didn't say it clearly. There is a problem with saying "If you do this" because that puts a compliance model on the table in front of every data protection authority in the world and says "Come and look at it. What do you think? Is it compliant?" So we don't want to - we want to leave a space for the work to get done without prematurely calling attention to what is an interim solution. That's the difficulty. That's what they're working through. It's not - you know, I wish that Goran had been able to say this clearly to (Jeff) but you want a written assurance is going to shine a light sort of, you know, whatever we do, we don't want to paint a target on anyone's back, including ICANN.

So this is hard. I am very encouraged to hear that - and I have heard it myself as Alex also mentioned that there - people are coming together, that we've gotten off the standing in, you know, our corners and yelling at each other that everybody is wrong. I think ICANN has got to do some serious work here. Nobody wants to show their cards first but I believe that ICANN will as quickly as possible try to come to the community with a couple of models that based on the legal advice it's gotten it thinks - it feels comfortable enforcing to. But we will not be absolute.

Man: Would you clarify - the word "model" to engineers is a data model, data schema and coding but also it was a lawyer might be speaking of an adjusted model for compliance which...

Becky Burr: So I'm not talking about adjusted model compliance. What I'm talking about is models of providing access to WHOIS. So the .frl, .amsterdam model might be one of them. I think there's some view that maybe the .eu model is another approach. So I think it's - you know, we have the models that are out there are working. We think that the Goran probably hasn't been - I know that there's a regulation and they have an obligation to comply with. So I think, you know, it may be that the community has views on which model is more or less attractive but I don't think it's going to be one because there are more than one way to comply with it.

Graeme Bunton: Thanks, Becky. I think maybe we're getting close to the end of this. So I got Jay in the queue and then maybe we'll wrap it up, unless someone has some closing thoughts on the issue.

Jay Sudowski: Jay Sudowski for the record. So I think going back to your opening statement, Graeme, that, you know, you already have coders in the basement, smelling badly, tells me that you also already have developed your own data model or Tucows has, right? Because you haven't printed out the GDPR and given it to your coder and says "Figure this out."

And so I think one of the things that it's frustrating is that there's a lack of certainty in terms of how ICANN is going to respond to this and, you know, we keep hearing "Well, ICANN is going to publish some data models." But I'm wondering like why don't the contracted parties just go to ICANN with the data model that they've developed, whether independently or jointly, and say "Here's what we intend to do. We understand that there's going to be a change in your compliance stature, you know. Does this meet the obligations that ICANN thinks we need to meet and is it compliant with GDPR?"

Graeme Bunton: Thanks, Jay. There might be others better to answer this than I. Our meeting immediately prior to this was with compliance and they essentially told us that they wouldn't, for any similar activity, whether it's GDPR or not, that it's not what the compliance function was there for.

So there wasn't like a real good way, it seemed, to interact with compliance in that fashion to be like we think this solves the problem. It seemed like we had to like find ourselves in violation of a policy voluntarily in order to get compliance to react to a proposal.

Michele Neylon: It's Michele. Just a follow-up a bit on that. I mean, the understanding I had or maybe I'm a little bit naïve or, I don't know, half sleep or something, was that a more collaborative approach where, you know, as a contracted party, submit your contract, et cetera, et cetera, go to compliance and I go "Hey, this is an issue we're having. We're thinking about doing this. Is this - will this work?" I mean, they're not a DPA. So they should be in a position to actually answer that question.

I mean, I'd like to say, you know, one of your staff comes to you and you said, "Right, you know, the last internal review you gave me you said that, you know, my performance needed to improve. Here's what I'm thinking about doing to do that." I mean, what businesses for God's sake. I mean, this should be that kind of dialog we're able to kind of work together to make sure that we're doing actually not only fit with the (unintelligible) but with the latter, et cetera, et cetera, et cetera. And the response we got this morning was it's a smack in the face, to be honest with you.

Man: The beatings will continue until morale improves.

Michele Neylon: Well, yes, exactly. I mean, it's - I mean, I was just - I was quite upset by it because from my perspective, I will give you a concrete example. My registrar is not particularly big. We don't get that many UDRPs. So if we get a - it was a UDRP that comes through us. We need guidance on how to

actually handle it because we don't deal with a large volume. And, you know, my staff, you know, we want to - they want to do their jobs but they're not familiar with the processes with UDRP and saying "Oh, we need the contract." Not particularly helpful.

And that was just the kind of thing we got back. And I was like "Oh, you know, maybe she'll talk to GDD staff to your account manager." I'm thinking "Who is my account manager?" I actually do know the answer. But in fact, it's not a particularly helpful dialog.

Graeme Bunton: Thanks. All right. You know, we're certainly - we may be putting GDPR largely aside for the moment. We're going to be talking about it for the next few months as well, certainly all the way through May and then probably for a while. So let's make sure we're keeping the dialogs going as we continue to sort through this issue and I think many of us are looking for the same sorts of things from ICANN. And so that's nice to know that we have some alignment there.

There's probably a sensible segue from GDPR into thick but maybe the IRTPC privacy/proxy thing is an issue that we can work through relatively quickly, hopefully. So let me give a little bit of background here because it's probably me to put this on here.

IRTPC is Inter-Registrar Transfer Policy Part C. It went into effect in December. As registrars were implementing that policy, like, actually writing code, it was discovered that there's an interaction between that policy and privacy and proxy services wherein if you added or removed a privacy service or a proxy service, it was kicking off the 60-day lock that's captured inside that policy. And now it's extremely problematic for all sorts of things, including domain transfers and the cause of sort of friction in the industry.

So we wrote a letter and we - I believe the GNSO endorsed it. It went up to the board. The board said, "Cool, we get it. There's a problem. Compliance

holds off in enforcing that piece while we figure out what to do next.” And there was not great clarity on what to do next. So the language, I think, from the board was a bit confusing. And so this is kind of rattled around for a while. And staff has been poking me repeatedly saying, “Hey, we need to figure this out. We can’t just let this sit there for forever.”

And actually in a GDPR context where they’re, you know, gaining access to WHOIS data and the model that privacy, the new privacy and proxy regime is going to bring forth. So some of this is going to be relevant and important.

So I think the ask is here, the information, the approach that we’d like to take, I think, is that registrars are going to bring to the GNSO that we would like to talk about this inside the implementation review team for the privacy and proxy services issues accreditation policy. And so that IRT is wrapping up relatively shortly. We don’t think this is a long or involved discussion. We think this is mostly definitional but to a certain extent, it - the conversation is, you know, do we think change of registrant should apply to privacy and proxy and the answer is no from our side but certainly we can have more conversations about that.

But mostly this is about process and do we think that inviting any remaining members of the original IRTPC, IRT to the privacy and proxy IRT to discuss this issue is a reasonable solution to move forward on it. And if it’s not, what’s the better place to try and figure out a more permanent solution for this interaction?

Steve DelBianco: This is Steve DelBianco. Inviting people to join a team doesn’t always get acceptance to those invitations. But asking people for input would work. So I would ask my CSG colleagues in the room and need to do it on list, are you aware of situations where a change to privacy/proxy really should generate a lock? I mean, in other words, are there use cases like that that should make this a little less simple than we had hoped? And we would want to learn that now if we embark on that path. And I would invite anyone in the room who’s

aware of any reason that a lock would be needed in a privacy or proxy designation.

Susan Kawaguchi: Susan Kawaguchi for the record. I can't envision any off - just off the top of my head and the way I always do, I'll try to see proxy registration as really the registrant is that underlying contact information. We really haven't held a privacy/proxy service. To the responsibility of the registrant, it always, you know, like if I file a - or in the past, filed a UDRP, couldn't find that, get that contact information, the underlying registrant information, then we filed against the service provider and then that was immediately revealed, you know. And so, therefore, it was really where we're looking for that information for the true registrant, I guess.

So I think from the intellectual property and I'm not speaking for everyone because I have not - we've not vetted this. So I - but in my personal opinion and experience, is the - we do not look - view the proxy service provider as the true registrant and this is sort of an unintended consequence.

And it seems like there's a simple solution of saying "Well, you know, there's always the 60-day lock. But in this case, no," you know, and I agree and we see that we should sort of take the time to look and see if there's an issue." Nothing comes to mind right off the top of my head. And I'm also part of the PPSAI, IRT, I don't always show up but, you know, it's a busy - it seems appropriate to be there because there's enough people on that IRT that have the experience to have a well-rounded discussion on this.

Graeme Bunton: Okay. Thank you, Susan. This is Graeme. That's hardening to hear. So what I'm going to do is I will draft an e-mail to the CSG and say "This is what it is that we would like to do." If you guys could think about any concerns and bring them to the table - so on a process level, let's make sure that moving that into IRT and if you have any concerns with that, let's figure them out. And then if not, then we can work on that substance piece. Susan, thank you. Alex?

Alex Deacon: Yes. Alex Deacon for the record. I think my only concern and this is one, Graeme, that I expressed before is the potential of further delaying the IRT. I understand that this is not that big of an issue. But the first time it was raised was a year ago. So we lost a year. So I think the - I urge you to start the process now, right? Because we're already - we could have had this done already, I think. And don't sit on it because the longer we sit on it, the larger the potential that it could -- hopefully it won't but it could -- delay the IRT. Thanks.

Graeme Bunton: Thank you, Alex. This is Graeme. Yes. And in fact, this is (unintelligible). This has been sitting in my backburner for far too long and I take responsibility for that. You're right. We don't want to delay it. Registrars are interested in having these rules, like the privacy and proxy regime. So, yes, let's try and do this swiftly. Thanks.

Michele Neylon: Thanks. Michele for the record. Just on the privacy/proxy, I mean, one of the ways this plays out the interim specification will have to be extended for at least 12 months. Due to the way our stakeholder group works, it's not a matter of Graeme mandating what happens, we have to ask. He hates that. So we are currently conducting a vote on this. And the question that we're asking is, no extension, extend 12, extend 18. So depending on how that comes out far and then that's what we'll go back to ICANN with.

Now the other thing I suppose that you should be aware of is that there is some concern and some discussions because of things like the current requirements on updated escrow in the 2013 contract which has a direct impact on privacy/proxy. So at the moment, the only data escrow provider that ICANN is paying for is Iron Mountain and Iron Mountain, even though they're a bloody big company seemed to be incapable of putting a few servers in Europe. Shock.

So that's a little bit of a problem because, you know, for some of us, we're seriously considering our options there. You know, should we be transferring any of that data outside of EU moving forward? Another thing to bear in mind that while you may think that the GDPR discussions have been painful, just wait and watch because there's more stuff coming down the line. You got Russia. You got Brazil. You got China. It's not a Europe versus whatever type thing.

Graeme Bunton: Cool. Okay. That's IRTPC and privacy and proxy. Going once, going twice. Sold.

Thick WHOIS. This is fun. So just as a sort of state of play - and I actually missed some of this because I tried to do late and I didn't see - I haven't had the time to get to lead the board resolution on this. But there's a sort of line through a thread of activities. One is Verisign filed an RAA amendment for common net. Registrars essentially took issue with that because it has some data handling provisions that we think are going to be problematic under the GDPR. Officially, it's ICANN that approves a RAA amendment to not but in there, there is - in the process, there is consultation with the Registrar Stakeholder Group which in itself is a weird thing because we're not a legal body. So it's kind of hard to respond to a contract as an aside.

So we told ICANN that we had a problem with that contract. Or with that amendment. And so ICANN organized some discussions between registrars and Verisign to see if we could come to some agreements on that amendment and the short answer was that we could not because we still don't know how GDPR is going to impact our contract and impact the way we handle data yet. And so - and given the size and scale of common net for most registrars, you know, it's pretty important. And so more or less we were at an impact. It's not - there's no animosity there. It's Verisign saying "We need these protections before we can move to thick WHOIS" and those are inside that RAA amendment, registrars saying "We can't greet your RAA

amendment until we understand how GDPR is going to be impacting us.”
And so that can't move.

Registrars asked the - we got to this place, this impact. Registrars asked for a - an extension. So Verisign got an extension on the move to thick. We asked for a similar extension on the compliance end of things and I believe that's what the board resolution guarantees are - at this like a 180-day extension on compliance enforcement. So it's not - it hasn't changed the date that we have to have stuff done. It's just changing the date that compliance is going to care about it.

And so that's my understanding of where the move to thick is - at least for common net and that's probably most important for people. I think (Mark) is in the room. Do you have anything to add to that? That's a pretty reasonable summary of where that is.

So that's - I'm not sure I have anything in particular for the GSC. I know there's, you know, a concern that thick happens sooner rather than later. That's more like the state of play as I understand it. If you guys have thoughts or questions or comments on that, happy to hear them.

Steve DelBianco: Steve DelBianco. I realized that Steve Metalitz is not here at the meeting but he's been the most attentive to the thick WHOIS transition for common net and an eloquent and persistent spokesperson on that.

I understand that he shared within the IPC his opinions but I don't have that. Are there IPC members that would wish to speak to at least your preliminary conclusions on that or raise any points with the thick WHOIS 180-day compliance extension? Anyone? No IPC interest in that?

So, Graeme, thanks for that heads up. I believe that we'll have to wait for further analysis by IPC and BC.

Graeme Bunton: Okay. Sure. I'll take a look. Let us know if you got concerns and, you know, we feel kind of stuck in this place. It's going to - you know, it's one of the many impacts of GDPR. And, you know, sort of on a broader note, registries file RAA amendments relatively frequently where they want to adjust things inside their contracts with all registrars because those are standardized. Or they have to be the same across all registrars.

And we are now trying to be consistent which is to say any of those that come through and have aspects of it that are dealing with data and data handling we're looking at putting the brakes on all of those sorts of amendments or at least trying to figure out a way to - you know, if the amendment is to remove the pieces that are problematic, maybe that's okay. But anything to make through at the moment that's relating to our contract and data handling has got to sort of pause for us at the moment.

Steve DelBianco: Steve DelBianco. I'm not having been part of any of those conversations. I would ask seriously, were the registrars uncomfortable with a declaration that you're compliant with all applicable law or a declaration that you were compliant with contract? Was it an ICANN contract or an applicable law thing that gave you the discomfort where you're just not prepared to certify?

Graeme Bunton: I'd have to ask someone on our RAA review team to enter that. I don't know that I can do that. Sure.

Michele Neylon: It's Michele for record. I think it's specifically around some of the contracts to have specific callouts about, you know, you must do (unintelligible) which might have been acceptable previously but when you're looking at it within the context of GDPR, it's like, okay, we need to be careful for this. I mean, another one that is going to open things up even more and make it - cause some fairly big collective headaches, GDPR is not a WHOIS issue. To be honest, it's much, much broader than that.

It's - if you're looking at, you know, data flows and contracts and various other things, if you're to be compliant, we have to ask at each and every system that we have information about how they handle personal data. And, you know, some - in some cases, that's going to be relatively easy. In other cases, even raising the issue with quite large companies who happen to operate in the space, I've been met with very, very strange responses.

So, well, I know it's - look, it's not you haven't got experience with this yourself but, you know.

Graeme Bunton: No. I mean, I don't have anything. We got through that list of things. I feel like I was little registrar heavy.

All right. Is there anything for the CSP for contracted party house?

Steve DelBianco: Hearing none, thanks, Graeme.

Graeme Bunton: Okay. I love giving people time back although I think it's not as much as I was able to give back, especially with the board, yesterday. But let's wrap this up.

So thank you for meeting with us. We always appreciate these dialogs and it's fruitful to hear your perspectives on some of these things and sort of some of the friction in getting stuff done. So thank you, everyone, for joining us today and we'll see you again in the near future.

Man: Okay. Thank you.

Graeme Bunton: Thank you.

Sue Schuler: We can end the recording.

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